
JUDICIAL REVIEWS

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INTRODUCTION

Judicial reviews are evidentiary in nature and allow the court to review the status of a child, review the compliance with the case plan by the parties, make changes to case plans and placements, and to otherwise enter orders that further permanency and safety for children in the dependency system. Judicial reviews are required for both out-of-home and in-home placements, however they are not required for children who are placed in adoptive homes by a licensed child-placing agency or who are refugees or entrants to whom federal regulations apply and who are in the care of a social service agency. § 39.704, Fla. Stat. (2007). Judicial review hearings are not subject to formal rules of evidence. Florida Statutes provide that the court can consider “any relevant and material evidence submitted to the court, including written and oral reports to the extent of their probative value.” These reports can be relied upon by the court to the extent of their probative value even though not competent in an adjudicatory hearing. § 39.701(8). Fla. R. Juv. P. 8.415 (e). Throughout all dependency proceedings, courts are charged with ensuring that the best interests of children are furthered. B.Y. v. Department of Children & Fam., 887 So. 2d 1253, 1255, 1256 (Fla. 2004). To that end, courts have inherent and continuing jurisdiction to enter any order appropriate to child welfare. *Id* at 1256.

JURISDICTION

The court shall maintain continuing jurisdiction throughout dependency proceedings. Should the court return a child to his or her parents, the court shall retain jurisdiction for at least six (6) months following reunification. After six months have elapsed and based on the social service agency and guardian ad litem’s report and any other relevant factors the court shall make a determination as to whether supervision by the department and the court’s jurisdiction shall continue or be terminated. § 39.701 (1)(a)(b).

The youth can petition the court at any time before his or her 19th birthday requesting the court’s continued jurisdiction for a period not to exceed one year following the youth’s 18th birthday for the specific purpose of determining whether appropriate aftercare support, Road-to-Independence program, transitional support, mental health, and developmental disability services have been provided to the child while in the dependency system. § 39.013(2).

A court may also retain jurisdiction over the dependency case up until a youth turns 22 for the purpose of allowing the continued consideration of a petition for special juvenile immigration status if such petition has been filed on behalf of the youth but a final decision has not yet been made by the federal authorities. § 39.013(2). Review hearings set for this purposes will be solely for the purpose of determining the status of the petition and application for special juvenile immigration status.

TIMING

The initial judicial review hearing must be scheduled by the clerk of the circuit court and must be held no later than ninety (90) days after the date of disposition hearing or after the date the court approves the case plan, whichever comes first. In no event shall the judicial review hearing be held more than six (6) months after the date the child was removed from the home. § 39.701(3)(a); Fla. R. Juv. P. 8.415(b)(1), (2).

Subsequent judicial review hearings shall be conducted at least every six (6) months or more frequently if necessary. § 39.701(1)(a); Fla. R. Juv. P. 8.415(b)(2). Even after termination of parental rights, reviews must be conducted every six months until the adoption is finalized. § 39.701(3)(c).

When a child has reached the age of 17, the court shall hold a judicial review hearing within 90 days after a child's 17th birthday and shall continue to hold timely review hearings. The court can review the child's status more frequently in the year preceding his or her 17th birthday if necessary. § 39.701(6)(a). *See 17 Year Old Judicial Review Checklist later in this chapter.*

The court and the department can establish a formal agreement for particular cases that authorizes administrative reviews instead of judicial reviews for children in out-of-home care. Notice of such administrative reviews must be given to all parties. Initial reviews cannot be substituted by an administrative review, the court must still conduct a judicial review at least every six (6) months, and any party dissatisfied with the results of an administrative review can petition for a judicial review. § 39.701(3)(d). Fla. R. Juv. P. (g).

SIX-MONTH REVIEW

No later than 6 months after the date that the child was placed in shelter care, the court shall conduct a judicial review hearing to review the child's permanency goal as identified in the case plan. At the hearing the court shall make findings regarding the likelihood of the child's reunification with the parent or legal custodian within 12 months after the removal of the child from the home. If, at this hearing, the court makes a written finding that it is not likely that the child will be reunified with the parent or legal custodian within 12 months after the child was removed from the home, the department must file with the court, and serve on all parties, a motion to amend the case plan under § 39.6013 and declare that it will use concurrent planning for the case plan. The department must file the motion no later than 10 business days after receiving the written finding of the court. The department must attach the proposed amended case plan to the motion. If concurrent planning is already being used, the case plan must document the efforts the department is taking to complete the concurrent goal. § 39.701(9) (e).

NOTICE

The clerk of the circuit court is responsible for scheduling hearings to comply with time requirements and providing parties with written notice of the date, time and location of the next hearing. § 39.701 (3)(e); Fla. R. Juv. P. 8.415(b)(2). Additionally, the date, time, and location of the initial judicial review must be included in the disposition order. § 39.521(1)(d)6. Notice of all judicial review hearings or citizen review panel hearings and a copy of a motion for judicial review, if any, must be served by the clerk of court upon:

- The department, if not the movant;
- The foster parent or legal custodian in whose home the child resides;
- The parents;
- The guardian ad litem for the child or a representative of the guardian ad litem program if the program has been appointed.;
- Any preadoptive parent;
- Any other persons as directed by the court in its discretion.

§ 39.701 (5).

If the person was present at the previous hearing where the next hearing's date time and location was announced, service is not required. § 39.701(5). Service must be conducted pursuant to Fla. R. Juv. P. 8.505.

JUDICIAL REVIEW SOCIAL STUDY REPORT

Prior to every judicial review hearing or citizen review panel hearing, the department shall make an investigation and social study concerning all pertinent details relating to the child.

Copies of the service agency and guardian ad litem's report must be served on:

- all parties whose whereabouts are known;
- to the foster parents or legal custodians;
- and to the citizen review panel;

at least 72 hours before the judicial review hearing or citizen review panel hearing. If the parents have voluntarily surrendered their child for adoption or have had their parental rights terminated, a copy of the report need not be served on them. §39.701 (7) (b). See also Fla. R. Juv. P. 8.215 (c) (1).

PRACTICE TIP: If the Program did not receive the judicial review social study report within the 72 hours allotted by the statute, the program attorney should consider requesting that the matter be continued on the grounds of notice so that the guardian ad litem can have an opportunity to review the report if requesting a continuance would be appropriate and not detrimental to the child. See Fla. R. Juv. P. 8.240.

CONTENTS

The Social Study Report Shall Contain (*At a Minimum*)

- A description of the child's placement at the time of the hearing, including the safety of the child and the continuing necessity for and appropriateness of the placement;
- Documentation of the diligent efforts made by all parties to the case plan to comply with each provision of the plan;
- The amount of fees assessed and collected during the period of time being reported;
- The services provided to the foster family or legal custodian to address the needs of the child as indicated in the case plan;
- The parents' compliance with the case plan in that:

- The parent, though able to do so, did not comply substantially with the provisions of the case plan, and the agency recommendations;
- The parent did substantially comply with the case plan;
- The parent has partially complied with the case plan with a summary of additional progress needed and the agency recommendations.
- A statement from the foster parent or legal custodian providing any material evidence concerning the return of the child to the parent(s);
- A statement concerning the frequency, duration, and results of the parent-child visitation, if any, and the agency recommendations for an expansion or restriction of future visitation;
- The number of times a child has been removed from his or her home and placed elsewhere, the number and types of placements that have occurred, and the reason for the changes in placement;
- The number of times a child's educational placement has been changed, the number and types of educational placements which have occurred, and the reason for any change in placement;
- If the child has reached his or her 13th birthday, but has not yet turned 18, the results of the preindependent-living, life-skills, or independent-living assessment, the specific services needed, and the status of the delivery of the identified services.;
- Copies of all medical, psychological, and educational records that support the terms of the case plan and that have been produced concerning the child, parents, or any caregiver since the last judicial review hearing;
- Accounting of master trust.

§ 39.701(7) (a).

The Report Should Also Include:

- facts showing the court to have jurisdiction of the cause as a dependency case;
- information containing the identity and residence of the parent, if known, and the legal custodian;
- the dates of the original dependency adjudication and any subsequent judicial review proceedings.

The Report Should Request One or More of the Following Forms of Relief:

- that the child's placement be changed;
- that the case plan be continued to permit the parents or social service agency to complete the tasks assigned to them in the agreement; or
- that proceedings be initiated to terminate parental rights and legally free the child for adoption. Fla. R. Juv. P. 8.415 (c).

SPECIAL ADDITIONS TO THE SOCIAL STUDY REPORT

Children on the Verge of Aging Out

If the child is older than 17, the department must include in its report additional information and written verification that the child:

- Has been provided with a Medicaid card and has been provided all necessary information concerning the Medicaid program sufficient to prepare the youth to apply for coverage upon reaching 18, if such application would be appropriate;
- Has been provided with a certified copy of his or her birth certificate and, if the child does not have a valid driver's license, a Florida identification card;
- Has been provided information relating to Social Security Insurance benefits if the child is eligible. If the child has received these benefits and they are being held in trust for the child, a full accounting of those funds must be provided and the child must be informed about how to access those funds;
- Has been provided with information and training related to budgeting skills, interviewing skills and parenting skills;
- Has been provided with all relevant information related to the Road-to-Independent Program, including but not limited to, eligibility requirements, forms necessary to apply, and assistance in completing the forms.
- If eligible for the Road-to-Independence Program, was notified he or she may reside with the licensed foster family or group care provider with whom the child was residing at the time of attaining his or her 18th birthday, or may reside in another licensed foster home or with a group care provided arranged by the department;
- Has an open bank account, or has identification necessary to open such an account, and has been given essential banking skills;
- Has been provided with information on public assistance and how to apply;
- Has been provided a clear understanding of where he or she will be living on his or her 18th birthday, how living expenses will be paid, and what educational program or school he or she will be enrolled in;
- Has been provided with notice of the youth's right to petition for the court's continuing jurisdiction for 1 year after the youth's 18th birthday as specified in § 39.013(2) and with information on how to obtain access to the court; *see Fla. R. Juv. P. 8.415 (9)*;
- Has been encouraged to attend all judicial review hearings occurring after his or her 17th birthday.

§ 39.701(6) (a).

PRACTICE TIP: Should the guardian ad litem find that any of the above information is missing from the social study report, the program attorney should consider questioning the child advocate/independent living specialist at the judicial regarding its obligations under Chapter 39 so that the court is aware of compliance or noncompliance by the department and so that it may order the department to provide services in accordance with Chapter 39.

Citizenship or Residency Status

When a child is adjudicated dependent, the department or community-based care provider must determine whether the child is a citizen of the United States. The department or community-based care provider shall report to the court *in its first judicial review* whether the child is a citizen of the United States, and if not, the steps that have been taken to address the citizenship or residency status of the child. § 39.5075 (2).

A court may retain jurisdiction over the dependency case up until a youth turns 22 for the purpose of allowing the continued consideration of a petition for special juvenile immigration status if such petition has been filed on behalf of the youth but a final decision has not yet been made by the

federal authorities. §39.013(2). Review hearings set for this purposes will be solely for the purpose of determining the status of the petition and application for special juvenile immigration status.

Indian Child Welfare Act (ICWA)

Special findings must be made in child custody (i.e. in foster care), termination of parental rights, pre-adoptive placements and adoptive placement proceedings involving an “Indian child” as defined under 25 U.S.C. § 1903(4) (2000). In addition, findings that a child is in need of either continued placement outside the parent’s home or continued supervision must be supported by *clear and convincing* evidence that continued custody of the child by the parent or Indian custodian would likely result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e) (2000). *Please refer to the Indian Child Welfare Act chapter of this practice manual for further information.*

PRELIMINARY ISSUES

Counsel

The parents must be advised of their right to counsel at every stage of dependency proceedings. §§ 39.013(1); 39.701(8) (b); Fla. R. Juv. P. 8.515.

The department must be represented by an attorney at every stage of dependency proceedings. Fla. R. Juv. P. 8.255.

The guardian ad litem is *not* required to have counsel present at a judicial review, however only an attorney can make legal arguments on behalf of the guardian ad litem.

Presence of Child

The child has a right to be present at the hearing unless the court finds that the child’s mental or physical condition or age is such that a court appearance is not in the best interests of the child. Any party may file a motion to require or exclude the presence of the child. Fla. R. Juv. P. 8.255.

General Magistrates

The usage of general magistrates is governed by the Florida Rule of Juvenile Procedure 8.257. General magistrates are empowered to administer oaths and conduct hearings, which may include the taking of evidence and all other actions concerning evidence that can be taken by a circuit court judge and in the same manner. Fla. R. Juv. P. 8.257(c)-(d)(3). All parties must consent to referral of a hearing to a general magistrate. Should a party object to a matter being heard by a general magistrate, a written objection must be filed within ten (10) days of service of the order of referral. Fla. R. Juv. P. 8.257(b)(2).

General magistrates shall file a report that includes findings of fact, conclusions of law, and recommendations and serve copies on all parties. Fla. R. Juv. P. 8.257(e) (1). Parties can serve exceptions to the general magistrate’s report within ten (10) days from the time it is served on them. Any party can file a cross-exception within five (5) days; however the filing of cross-exceptions will not delay the hearing on the exceptions unless good cause is shown. If no exceptions are filed, the court can take appropriate action on the report. Fla. R. Juv. P. 8.257(f). The court is bound by the general magistrate’s factual findings unless they are not supported by

“competent substantial evidence or are clearly erroneous.” Carls v. Carls, 890 So. 2d 1135, 1138 (Fla. 2nd DCA 2004).

Hearing

The court or citizen review panel shall make the following determinations and findings:

- If the parent was advised of the right to receive assistance from any person or social service agency in the preparation of the case plan;
- If the parent has been advised of the right to have counsel present at the judicial review and if not, shall advise the parent of the right to counsel;
- If a guardian ad litem needs to be appointed for the child if not already been appointed or if there is a need to continue the guardian ad litem’s appointment if a guardian ad litem has already been appointed;
- The parent’s compliance or non-compliance with a case plan, including child support orders;
- The parent’s compliance with a visitation contract between the parent and the social service agency including the frequency, duration, and results of the parent-child visitation (i.e., reports from the supervisor of the visitation) and the reason for any non-compliance;
- The parent’s compliance in meeting specified financial obligations pertaining to the care of the child, and if the parent is not complying, why not;
- The appropriateness of the child’s current placement, including whether the child is in a setting which is as family-like and as close to the parent’s home as possible, whether the placement is consistent with the child’s best interests and special needs, and whether the placement advances stability in the child’s educational placement;
- A projected date for the child’s return home or other permanent placement;
- If the parent is unwilling or unable to become a party to a case plan, and whether the efforts of the social service agency to secure party participation in a case plan were sufficient;
- If a child has reached the age of 13 but is not yet 18 years old, the adequacy of the child’s preparation for adulthood and independent living;
- If amendments to a case plan are required, amendments must be made in accordance with § 39.6013.

§ 39.701 (8) (a)-(j).

To make its determinations, the court or citizen review panel shall take the following into consideration:

- The social study report and investigation;
- All medical, psychological, and educational needs that support the terms of the case plan;
- Testimony by the social services agency, the parent, the foster parent or legal custodian, the guardian ad litem and any other person deemed appropriate;
- Any relevant and material evidence submitted to the court, including written and oral reports to the extent of their probative value, even if not competent in an adjudicatory hearing. § 39.701 (8).

Court Action at Judicial Review Hearings

Pursuant to § 39.701 (a), (b) and Fla. R. Juv. P. 8.415 (f), the court has the following options for action at the conclusion of the judicial review:

- The court can determine whether the parties have complied with the case plan and determine what assigned tasks were and were not accomplished and the reasons for any nonachievement. Fla. R. Juv. P. 8.415 (f) (1);
- The court can determine whether the department has complied with its obligations, and upon finding that it has not, find the department in contempt and order the department to submit its plan for compliance with the case plan and show why the child cannot safely be returned home to the parents or issue a show cause order and give the department 30 days within which to comply.
 - If the court finds that the child cannot safely return back to the parents, the court can extend the case plan for a period of not more than 6 months to allow the department to comply with its obligations.
Fla. R. Juv. P. 8.415 (f) (3) (4). *See also Compliance by the Parent or Department in this chapter;*
- The court may determine whether the department shall initiate proceedings to have the child declared dependent;
- The court may return the child to the parent or continue placement of the child with the parents:
 - The court can return the child to the custody of the parents at any time it determines that they have *substantially complied* with the case plan and if the court is satisfied that reunification will not be detrimental to the child's safety, well-being, and physical, mental and emotional health. § 39.701 (9)(b); Fla. R. Juv. P. 8.415 (2);
 - If the court allows a child to remain in the home or returns a child to the home, the court must make a specific finding that the parent has substantially complied with the case plan in *that the reasons for the creation of the case plan have been remedied to the extent that the child's safety, well-being, and physical, mental and emotional health will not be endangered.* § 39.701(9)(a);
- The court can continue the child's placement in out-of-home care for a specified period of time;
- The court can authorize the filing of a petition for termination of parental rights, even if the case plan has not expired, if the court finds that the parents have *failed to substantially comply with the case plan to the degree that further reunification efforts are without merit and not in the best interests of the child.* § 39.701 (9); Fla. R. Juv. P. 8.415 (5). *See also Initiation of Termination of Parental Rights Proceedings below.*
- Material breach of case plan may result in filing for TPR sooner than stated compliance period § 39.6011(2)(e).
- The court can extend jurisdiction for a youth who has been in the custody of the department immediately before his or her 18th birthday for the purpose of determining whether appropriate aftercare support, Road-to-Independence Program, transitional support, mental health, and developmental disability services have been provided to the youth. § 39.013(2); Fla. R. Juv. P. 8.415 (8).
- The court may retain jurisdiction when a petition for special immigrant juvenile status and application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18. The

continued jurisdiction is solely for the purpose of determining the status of the petition and application. The jurisdiction will terminate upon the final decision of the federal authorities or on the immigrant child's 22nd birthday, whichever comes first. § 39.012(2); Fla. R. Juv. P. 8.415 (9).

PRACTICE TIP: If dispositional changes have been made at a judicial review hearing, the case plan must be amended to reflect those changes pursuant to § 39.601.

Initiation of Termination of Parental Rights Proceedings

There are three ways in which a termination of parental rights proceeding can be initiated at the judicial review stage of a dependency proceeding. The first is by order of the court when the court finds at the judicial review hearing that the parents have failed to substantially comply with the case plan to the degree that further reunification efforts are without merit and not in the best interests of the child. § 39.701(9) (e); *See also definition of "substantial compliance" § 39.39.01(68)*. A TPR petition may be filed sooner than 12 months if the case plan has been materially breached by the parent.

The second is if while preparing for any judicial review hearing, the department believes that the parents *have not complied with the case plan, despite its ability to do so*. In this event, the department can state its intent to file a petition for termination of parental rights. § 39.703.

- If the department intends to file a petition for termination of parental rights, it must do so no later than three (3) months of the previous judicial review hearing or it must advise the court of the reasons for the delay and the progress made towards filing the petition.
- If the parent is not in substantial compliance with the case plan but the department does not intend to file a petition for termination of parental rights, the department must demonstrate that the recommendation to file a petition to terminate parental rights is not in the child's best interests.

Lastly, the department is mandated to initiate termination of parental rights hearings if at the 12 month judicial review hearing, the child has not been returned to the parents within 30 days. § 39.703(2). Exceptions to this mandate include:

- If the court finds that the situation of the child is so extraordinary and the best interests of the child will be served by extending the time to achieve the case plan goal. The court must make detailed findings of its reasons and specify a definite time period for case plan continuance, not to exceed six (6) months. § 39.703 (2); Fla. R. Juv. P. 8.415(f) (5).
- If the child is being cared for by a relative who chooses not to adopt the child but who is willing, able, and suitable to serve as the legal custodian for the child until the child reaches 18 years of age;
- If the court finds that filing such a petition is not in the best interests of the child; or.
- If the state has not provided the child's parent, when reasonable efforts to return a child are required, consistent with the time period in the state's case plan, such services as the state deems necessary for the safe return of the child to his or her home. § 39.703 (2).

Note: Failure to initiate termination of parental rights proceedings at the time of the 12-month judicial review within 30 days after such review does not prohibit initiating termination of parental rights proceedings at any other time. § 39.703 (2).

Compliance by the Department

If the court finds the social service agency has not complied with the terms of the written case plan, the court can find the social service agency in contempt, shall order the social service agency to submit its plans for compliance with the agreement, and shall require the social service agency to show why the child could not safely be returned to the home of the parents. § 39.701 (9) (a); Fla. R. Juv. P. 8.415 (3). The court may also issue a show cause order if at the time of a judicial review hearing it finds that the department has not complied with its obligations as specified in the written case plan or in the provision of independent living services. If cause is shown for failure to comply, the court shall give the department thirty (30) days within which to comply and, on failure to comply with this or any subsequent order, the department may be held in contempt. Fla. R. Juv. P. 8.415 (4). *See also Fla. R. Juv. P. 8.285 for rules governing civil contempt in juvenile cases.*

Citizen Review Panel

Some circuit courts utilize citizen review panels to conduct review hearings. A citizen review panel is comprised of five trained volunteer members who provide the court with a report, including all findings of fact required by the court, and recommendations regarding placement and other dispositional alternatives the court shall consider before issuing a judicial review order. § 39.702 (3), (5). The citizen review panel's recommendations are limited to those dispositional alternatives available to the court. § 39.701 (2) (c).

The court selects appropriate cases to be heard by the citizen review panel by referral. If a party objects to the referral of a case to a citizen review panel, it is reviewed by the court to determine whether it will conduct the review itself or enforce the referral to the citizen review panel. § 39.701(2) (b). Notice of a hearing by a citizen review panel must be as provided by § 39.701 (5). After the hearing is concluded, the citizen review panel shall submit its report, copies of the proposed recommended orders (drafted by the parties), and a copy of the panel's recommended order to the court. § 39.701(2) (c). Any party can make exceptions to the report and recommendations of the citizen review panel pursuant to Fla. R. Civ. P. 1.490(h). Should the citizen review panel recommend extending a case plan goal of reunification beyond 12 months from the earlier of the date the child was removed from the home or the case plan was adopted, the court just schedule a judicial review hearing within 30 days after receiving the recommendation from the citizen review panel. §39.701(3) (a).