



NEW JERSEY DEPARTMENT
OF CHILDREN AND FAMILIES

New Jersey Department of Children and Families Policy Manual

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Issuance:	500	Termination of Parental Rights (Guardianship)	

Purpose

6-14-2010

This issuance presents CP&P policy regarding termination of parental rights (TPR), including:

- A definition of termination of parental rights (TPR) and terms related to filing for TPR;
- A brief overview of State regulatory requirements when initiating TPR action;
- TPR and reasonable efforts;
- Time frames for filing for TPR;
- Exceptions to filing for TPR;
- Advising the parent of the decision to file for TPR and the parent's legal rights;
- Grounds for TPR;
- Processing the TPR complaint;
- Hearings; and
- CP&P actions to appeal adverse court rulings.

Authority

6-14-2010

- N.J.S.A. 30:4C-15 et seq.
- N.J.A.C. 10:133J, Termination of Parental Rights

Definitions

6-14-2010

"Termination of Parental Rights" (TPR) means the legal action taken by a court of competent jurisdiction to sever all the legal and biological ties of a parent to his or her birth or adoptive child. TPR is final and results in a parent having no rights or legal authority in decision making for the child. The Division pursues the termination of the parental rights of all parents when a child cannot be safely returned to either parent, and TPR is necessary to achieve an adoption plan for the child.

"Termination of Parental Rights (TPR), (Guardianship (GSP)), Complaint" means a legal document filed with the court to begin litigation to support a TPR action pursuant to N.J.S.A. 30:4C-15 for the purpose of legally freeing a child for adoption. The Division uses either a full detailed TPR complaint or the shorter "Abridged Complaint," depending upon the case circumstances. The TPR Complaint identifies the child involved and his or her parent(s), summarizes the history and facts of the case, and explains the specific relief being sought. It also notifies all parties involved in the litigation of the nature of the proceedings.

"Abridged Complaint for Guardianship" or "Abridged Complaint" means a legal document that uses standardized language and incorporates past pleadings, prior protective services court orders, and court reports, to support a TPR action pursuant to N.J.S.A. 30:4C-15. The Abridged Complaint provides notice of the family's history and circumstances, and states the services CP&P arranged in an attempt to resolve the problems prior to initiating the TPR action. The Abridged Complaint provides adequate notice to both parents explaining the relief sought and the basis for that relief. When filing an Abridged Complaint, "Appendix A" is filed with the complaint in lieu of the "Evidence Packet." The Abridged Complaint provides an efficient alternative to the timely preparation of a detailed and lengthy full Termination of Parental Rights Complaint.

"Evidence Packet" means first hand, second or third party information that is used to support the TPR action. The Evidence Packet may include court orders or court reports filed on protective service matters. The evidence includes, but is not limited to:

- CP&P case record material, including court orders or court reports filed on protective service matters;
- Psychological/psychiatric evaluations and service provider progress reports;
- Drug/alcohol evaluations and screenings;
- Police reports; and
- Family verification documents (e.g., birth, death, marriage/civil union, or domestic partnership certificates; divorce or dissolution decrees).

"Appendix A" means a chronological list of the prior court orders, court reports, and other third party information incorporated by reference in the Evidence Packet. The Appendix A provides a record of the evidence the Deputy Attorney General will use to support the TPR. It is provided to all attorneys involved in the guardianship litigation.

"Default Testimony" means a sworn statement taken under oath from a Division Worker about the basis for the TPR action.

"Certification of Proof" means the same testimony given as Default Testimony, except the statement is submitted as a sworn written certification or Affidavit in lieu of oral testimony. In rare circumstances, a Certificate of Proof may be submitted by mail, without a court appearance by the CP&P Worker, at the discretion of the Deputy Attorney General and the Judge.

"Discovery" means the process of information gathering and sharing with the court and legal counsel during legal proceedings.

"Default" means a judgment entered by the court after the parent has been properly served with a TPR Complaint and failed to appear for the Initial Hearing, or service has been waived by the court based on a diligent search, documented by an Affidavit of Inquiry, and a proof hearing has been held. See [CP&P-IV-C-1-600](#).

"Guardianship Deputy Attorney General" (GSP DAG) means the State attorney who represents the Division in guardianship litigation.

"Protective Services Deputy Attorney General" (PRS DAG) means the State attorney who represents the Division in protective services litigation.

"Expert" means a person duly credentialed in the state in which he or she practices, specializing in the field of pediatric, neurological, or psychiatric medicine; nursing; psychology; social work; substance abuse; or other related fields. See [CP&P-II-C-7-100](#), for a definition of an "Expert Witness."

"Child Advocate" means a person specializing in the field of child advocacy, who demonstrates his or her education and/or experience in that field to the satisfaction of the Division, but is limited to such persons who have had direct involvement in permanency planning for the child. Child advocates include, but are not limited to, Court Appointed Special Advocates (CASA) and Law Guardians.

Overview of Regulatory Requirements

6-14-2010

When litigation has been initiated by the State through legal proceedings, the court may terminate parental rights and place the child in the guardianship of the Division of Child Protection and Permanency. The court must determine that termination of parental rights is in the child's best interest. In most instances, litigation to terminate parental rights should not occur unless adoption is the goal for the child.

Because parents have inherent rights, sanctioned by law, to the care, custody, and control of their children, there is a strong presumption in favor of the parents in any proceeding to terminate their rights. Pursuant to State regulations, N.J.A.C. 10:133J-2.1, in any decision to pursue termination of parental rights, CP&P staff shall:

(a) Initiate a petition to terminate parental rights in accordance with N.J.S.A. 30:4C-15 and 30:4C-15.1 or applicable case law.

(b) Consult with the GSP Deputy Attorney General on situations that may meet the standards stated in N.J.S.A. 30:4C-15 and 30:4C-15.1. See [CP&P-III-B-2-200](#).

- (c) Consider offering the parent the opportunity to surrender his or her parental rights pursuant to N.J.S.A. 30:4C-23, and advise the parent if the Division will pursue involuntary termination of parental rights (in accordance with N.J.S.A. 30:4C-15 and 30:4C-15.1); and
- (d) Advise each parent, whose whereabouts are known to the Division and whose parental rights the Division is considering involuntarily terminating, of his or her right to a trial and legal counsel.

TPR and Reasonable Efforts

6-14-2010

Although, in most cases of children entering resource care, the primary case goal is reunification with the parent or parents, see [CP&P-III-B-4-400](#), it is essential to establish a concurrent or secondary goal, usually adoption, to assure permanency. See [CP&P-III-B-2-300](#) for a detailed description of concurrent permanency planning policy.

The Worker and Supervisor review cases of children in resource care routinely, and in a more formalized manner at the 5th and 10th month of placement. Reviews serve to assure that reasonable efforts toward reunification are appropriate and ongoing, and that a viable concurrent permanency plan is in place.

When children remain in care at the 10th month of placement, a conference is scheduled which includes the GSP Deputy Attorney General, to determine whether timely reunification continues to be an achievable case goal, or filing a TPR petition should be considered. This conference determines recommendations to be made at the judicial Permanency Hearing held within 12 months of placement.

A case goal of adoption is established, where indicated, following judicial determination at the Permanency Hearing.

Expedite the Permanency Hearing for repeat placements and/or if reasonable efforts to reunify are not required. See [CP&P-IV-A-3-200](#).

Time Frame to File for TPR

6-14-2010

File for termination of parental rights at the following intervals, after consulting with the GSP DAG:

- When any of the conditions or circumstances that are outlined in Grounds for Termination of Parental Rights (below), are present;
- In accordance with the Federal Adoption and Safe Families Act (ASFA) and State law, N.J.S.A. 30:4C-15, and regulations, N.J.A.C. 10:133J-2.1, which require that TPR be initiated for a parent of a child who has been in out-of-home placement for 15 of the last 22 months, unless the Division has established an exception. See above and [CP&P-III-B-2-200](#);

- When, despite reasonable efforts to strengthen the parental relationship, the parent "has failed for a period of one year to remove the circumstances or conditions that led to the removal or placement of the child, although physically and financially able to do so..." (N.J.S.A. 30:4C-15(d)); or
- Within 6 weeks after adoption becomes the court approved permanency goal at the child's Permanency Hearing, whether at ten months, or earlier, or later.

Circumstances That Are Exceptions to Filing for TPR 6-14-2010

Pursuant to N.J.A.C. 10:133J-2.2(b), although CP&P may file a petition for termination of parental rights, it is not required to file a petition for TPR, if:

- CP&P determines that the child is being cared for by a relative, and a permanent plan for the child can be achieved without the termination of parental rights;
- CP&P has documented in the Case Plan, which is available for court review, a compelling reason for determining that filing the petition would not be in the best interests of the child; or
- The Division representative has not provided to the child and family reasonable services necessary for the safe return of the child to his or her home, consistent with the time period in the Case Plan, although required to do so.

Although adoption is the preferred permanency goal for a child who cannot safely return to the care of either biological, other legal, or an adoptive parent, the Division may decide not to file for termination of parental rights when adoption of the child is neither feasible nor likely. See N.J.A.C. 10:133J-2.2(a).

Document in both the Case Plan and in the NJS application, in the Legal Status Window, the details of the case circumstances meeting the requirements for an exception. When an exception is made pursuant to N.J.A.C. 10:133J-2.2(a), include in the documentation the reasons why adoption is neither feasible nor likely for the child, and thus is not the most appropriate case goal for the child.

See N.J.S.A. 30:4C-15.3 and N.J.A.C. 10:133J-2.2.

Advising the Parent of the Decision to File for TPR 6-14-2010

The Worker:

- Must discuss the termination of parental rights action with the parent. Advise the parent that he or she has the right to a trial and to be represented by legal counsel at any involuntary termination of parental rights court proceeding. If the parent is unable to afford an attorney, the parent may make application to be

represented by a Public Defender. The parent must file a Form 5A with the Office of the Public Defender, Parent Representation Unit, even if the parent was previously approved for a Public Defender in the PRS litigation. Offer the parent the opportunity to surrender his or her rights voluntarily pursuant to N.J.S.A. 30:4C-23.

- Meets with the child, when appropriate, to discuss termination of his or her parents' parental rights.
- Records all contacts with the child, and the birth and/or legal parents in the child's electronic case record on the Contact Activity/Notes Window, printable as CP&P Form [26-52](#), Contact Sheet.

Considerations for TPR

6-14-2010

TPR decisions are made on a case-by-case basis, based on the individual circumstances of the child and the family. In accordance with N.J.A.C. 10:133J-2.3, factors staff may consider include, but are not limited to:

1. "The child's age;
2. The child's level of maturity;
3. The child's developmental level and needs;
4. The child's opinion regarding the permanent plan;
5. The placement history, including the length of time the child has been in placement;
6. The progress that each parent has made toward return of his or her child;
7. The relationship between this child and his or her parents;
8. The child's relationship to siblings, if any;
9. The case goal for each of the child's siblings, if any;
10. Expert opinions in respect to permanency planning for the child;
11. The opinions of child advocates in respect to permanency planning for the child;
12. The appropriateness and feasibility of all the various permanency options for this child;
13. The out-of-home placement provider's commitment to the child, and commitment and capacity to meet the child's needs currently and in the future;
14. The relationship between the child and the out-of-home placement provider, and the out-of-home placement provider's family;
15. The potential permanent caregiver's ability and willingness to assure safety, permanency, and well-being for the child; and
16. Each parent's role in potential permanency plans for this child."

Grounds for Termination of Parental Rights

Authority

6-14-2010

- N.J.S.A. 30:4C-15 et seq.

Statutory Basis for Termination of Parental Rights Petitions 6-14-2010

New Jersey statutes set forth conditions or guidelines for terminating the parent-child relationship (see N.J.S.A. 30:4C-15 and 15.1). Whenever any of the following conditions or circumstances exists, the Worker conferences the child's case with the GSP DAG to determine whether statutory standards for filing a TPR petition are met:

- The case circumstances conform to the conditions of the New Jersey Safe Haven Infant Protection Act. Pursuant to the Act, if a parent (or person acting on behalf of a parent) voluntarily brings his or her infant, no more than 30 days old, to, and leaves the infant at, a police station or hospital emergency department, with no intent to return for the infant, CP&P must file for termination of parental rights no later than 21 days after assuming custody of the child, providing that no willing or suitable parent or relative comes forward or is located. A legal search is not required.

See [CP&P-IV-C-5-100](#), Safe Haven Infants.

- The child is a foundling (see [CP&P-II-C-5-700](#) on Abandonment);
- Both parents are missing and a search has been completed and has failed to locate the parents. See [CP&P-III-C-4-100](#).
- The child is an orphan;
- The court has recommended or ordered CP&P to seek termination of parental rights (guardianship);
- Due to serious psychological or physical conditions, the parent is unable to care for the child or to sign a Surrender of Custody and Consent to Adoption;
- Reasonable and diligent efforts to return the child home safely have failed, and the Division's search for, and assessment of, relatives pursuant to N.J.S.A. 30:4C-12.1 indicate there are no known relatives who are able and willing to meet the needs of the child;
- The parent is unwilling or unable to eliminate the harm facing the child, or is unable or unwilling to provide a safe and stable home for the child, and the delay in providing a permanent home for the child would cause serious and enduring emotional or psychological harm to the child;
- Separating the child from his or her resource parent(s) would cause serious and enduring emotional or psychological harm to the child;

- Termination of parental rights is necessary to meet the psychological, emotional, medical, physical, or educational needs of the child;
- The parent is incarcerated and his or her sentence is of a length that, when compared against the age and needs of the child, the child will not have achieved or maintained his or her bond with the parent by the time the parent is paroled, and the parent refuses to sign a Surrender of Custody and Consent to Adoption;
- The parent is incarcerated for a crime so vicious or heinous that rehabilitation is unlikely to occur in the foreseeable future (or not at all), and return home to the parent of the child would have a profoundly detrimental effect on the emotional well-being of the child, as determined by a professional expert, and the parent refuses to sign a Surrender of Custody and Consent to Adoption; or
- The validity of a signed Surrender of Custody and Consent to Adoption is in question, or one parent signed the Surrender but the other parent, either biological or legal, did not.

TPR Based on Abuse/Neglect

6-14-2010

When the court has entered a finding against a child's parents because of abuse, abandonment, neglect, or cruelty in a proceeding under N.J.S.A. 9:6, the Worker holds a case conference with the GSP DAG to determine whether there are sufficient grounds to file a termination of parental rights petition. Circumstances to consider for conferencing include, but are not limited to:

- The death or serious injury of a sibling caused by the parent through maltreatment;
- The sexual abuse of a child by a parent(s) who has severe problems and who refuses or is unable to benefit from help;
- Severe or chronic maltreatment of the child;
- Abandonment of the child; or
- The child is left as a foundling.

TPR Based on Best Interests

6-14-2010

In order to petition the court for termination of parental rights based on the child's best interests, the Division must demonstrate by expert testimony that it would be detrimental for the child to return to his or her parents. The standards set in the statute, N.J.S.A. 30:4C-15.1, are:

- The child's safety, health, and development have been, or will continue to be, endangered by the parental relationship;
- The parent is unwilling or unable to eliminate the harm facing the child, or is unable or unwilling to provide a safe and stable home for the child, and the delay

of a permanent placement will add to the harm. Such harm may be demonstrated by evidence that separating the child from his or her resource parent (including kin caregivers; relatives or family friends) would cause serious and enduring emotional or psychological harm to the child;

- The Division has made reasonable efforts to provide services to help the parent correct the circumstances which led to the child's placement outside the home, and the court has considered alternatives to termination of parental rights; and
- Termination of parental rights will not do more harm than good.

TPR Based on Parental Failure to Remove the Circumstances/Conditions Leading to Placement **6-14-2010**

According to N.J.S.A. 30:4C-15(d) and (f), TPR may be initiated when, despite reasonable efforts to strengthen the parental relationship, the parent "has failed for a period of one year to remove the circumstances or conditions that led to the removal or placement of the child, although physically and financially able to do so..."

The expectation that the parent will take timely action to remedy or mitigate the circumstances or conditions which were the basis for the child's removal from the home and/or for his or her continued placement places a large burden both on the parent and on the Division.

It is not enough for the parent to merely maintain contact with, or to express interest in, the child, or to "plan" for the child's future by participating in the development of a Case Plan or service agreement. The parent must demonstrate efforts to correct the harmful circumstances which caused the child's removal or continued placement, and must be amenable to utilizing services or other assistance to do so.

Similarly, it is not simply enough for the Division to identify or arrange appropriate services for a parent. Division staff must take steps to assure that the family receives other, additional services, which are needed to participate in, or utilize, the service. Examples: A) If family counseling is arranged, the Worker must also make efforts to assist the family, if necessary, with transportation or with scheduling convenient to the parent's working hours. B) Arrange for a service provider fluent in the parent's primary language.

Processing the Termination of Parental Rights Complaint/Petition

Preparing the Complaint

6-14-2010

The TPR Complaint and accompanying documents are prepared in the Local Office by the Paralegal and reviewed by the GSP DAG assigned to the Local Office. The GSP DAG represents CP&P throughout the termination litigation. When the TPR Complaint is

complete, it is filed with the County Superior Court, Chancery Division, Family Part (Family Court).

The TPR Complaint must be prepared and filed with the court within six (6) weeks after adoption becomes the court approved permanency goal at the child's Permanency Hearing, whether at ten months, or earlier, or later.

A complete and thorough review of the case record is conducted by the Paralegal to correctly identify the parents. Litigation must include any named father. Although the relationship may not have been verified by CP&P, information may be derived by a case conference with current or previous Workers or Supervisors.

The Worker or Paralegal assists the DAG in identifying and notifying witnesses and supplying the Sheriff's Office with current addresses of the birth parent(s) and/or legal parent(s) who are to be served with the Termination of Parental Rights Complaint.

Parents Must Be Served with TPR Complaint 6-14-2010

In most jurisdictions in New Jersey, it is the County Sheriff's Office or the CP&P Worker/representative who serves the parent. Serve the parent with a copy of the Order to Show Cause or Summons and the Termination of Parental Rights Complaint at least 20 days prior to the initial court hearing. Serve a parent who resides out-of-state at least 35 days prior to the initial court hearing (see N.J.S.A. 30:4C-17b).

Prepare an Affidavit of Service documenting that the Complaint has been served, unless otherwise instructed by the GSP DAG.

Search Required if a Parent(s) is Missing 6-14-2010

A search for the parent(s) is initiated when:

- The Worker becomes aware that a parent is missing; or
- The Worker cannot supply the Sheriff's Office with the current address of the birth parent(s) and/or legal parent(s) who must be served with the Termination of Parental Rights Complaint.

When preparing for a search, review the case record for any information useful in locating the parent(s). All searches must be consistent with statutory requirements, which have specific, limited guidelines for searches. See N.J.S.A. 30:4C-17 and [CP&P-III-C-4-100](#).

If the parent(s) is not found, an Affidavit of Inquiry is prepared and signed by the Paralegal. See NJS Legal Forms, for the Affidavit of Inquiry form.

If a search for an absent parent is not complete when the Complaint is filed, include a statement in the Complaint that a search is in progress.

Supporting Evidence Packet /Discovery

6-14-2010

The Paralegal compiles all first hand and second and third party information to be used as evidence in support of the TPR action. These reports, a copy of the child's long form birth certificate, and all previously filed litigation complaints and court orders, as well as a copy of the full case file are submitted to the GSP DAG for review with the draft TPR Complaint prior to filing for TPR. The Evidence Packet accompanies the TPR Complaint, unless the Abridged Complaint for Guardianship is used (see above). For an Abridged Complaint, an Appendix A is filed with the TPR Complaint in lieu of the Evidence Packet. Although the Evidence Packet is not attached to the Abridged Complaint, the attorney(s) for the parent(s) receives a copy of the Evidence Packet as Discovery.

The evidence includes, but is not limited to:

- CP&P case record material, including court orders or court reports filed on protective services matters;
- Psychological/psychiatric evaluations and service provider progress reports;
- Drug/alcohol evaluations and screening;
- Police reports; and
- Family verification documents (e.g., birth, death, marriage/civil union, or domestic partnership certificates; divorce or dissolution decrees).

Filing the Abridged Complaint for Guardianship 6-14-2010

The Abridged Complaint provides an efficient alternative to the timely preparation of a detailed and lengthy full Termination of Parental Rights Complaint. Since all children placed in resource care are under the review and jurisdiction of the County Superior Court, Chancery Division, Family Part, in almost all instances the court is familiar with the case circumstances and has built a significant court record prior to the filing of the TPR Complaint. A detailed TPR is, therefore, often not necessary.

The Abridged Complaint for Guardianship is most commonly used when it is anticipated that all parents will surrender their parental rights, or the parents will not appear in court to contest the TPR filing, and a "Judgment of Default" will be entered.

Cases Appropriate for an Abridged Complaint for Guardianship 6-14-2010

Use the following criteria to determine if an Abridged Complaint for Guardianship is appropriate for the case:

- The case has an active Protective Services Complaint in the Superior Court, Chancery Division, Family Part (Note: All cases where children are in out-of-

home placement are active CPS cases in Family Court. A child in residential care pursuant to a voluntary placement agreement is an exception); and

- The GSP DAG has confirmed the case is TPR ready and approves the filing of the Abridged Complaint for Guardianship.

The final decision on whether to file an Abridged Complaint for Guardianship is at the discretion of the GSP DAG, who will represent the Division at the termination proceedings. If an Abridged Complaint is filed in anticipation of surrenders or defaults, but the parent(s) appear and contest termination, a full Complaint may then be required at the discretion of the DAG.

Circumstances for Full TPR Complaint

6-14-2010

In most cases, if the criteria above are met, the GSP DAG is expected to accept the case for filing as an Abridged Complaint for Guardianship. In exceptional circumstances, the GSP DAG has the authority to direct the Division to prepare a full TPR Complaint.

Examples of exceptional circumstances include:

- a. a case where the court has made a determination that reasonable efforts to reunify are not required pursuant to N.J.S.A. 30:4C-11.3 because the parent was convicted of aggravated circumstances of abuse, neglect, cruelty, or abandonment;
- b. the child has been abandoned by his or her birth or legal parent and six (6) months have passed; and
- c. Safe Haven Infant complaints. See [CP&P-IV-C-5-100](#).

To further support the basis of a TPR action when the court has already determined that reasonable efforts to reunify are not required, the GSP DAG may direct the Paralegal to prepare a full TPR Complaint to show the dynamics and/or nature of the abuse/neglect, and to fully chronicle all of the allegations and facts of the case in the detailed format that the regular TPR Complaint provides.

Preparing Appendix A

6-14-2010

Appendix A is prepared as a separate, type-written document that is attached to the Abridged Complaint for Guardianship when it is filed and served.

Complaints for Foundlings

6-14-2010

The Termination of Parental Rights Complaint for a child who is a foundling requires commitment of the child to CP&P, and establishing the child's date of birth and

birthplace. The child is referred to as Baby Girl Foundling or Baby Boy Foundling, and is identified by his or her CP&P case ID number.

Termination of Parental Rights Hearings

Initial Hearing

6-14-2010

After the TPR Complaint and accompanying documents are filed with the County Superior Court, Chancery Division, Family Part, an Initial Hearing (the return of the Order to Show Cause) date is set. At the Initial Hearing information is shared by the attorneys for the Division and for the parent(s) through Discovery. Information is also shared with/by the child's Law Guardian.

If the parent fails to appear at court, a Default for non-appearance may be entered by the court, provided that the parent(s) is properly served with a notice of the TPR Complaint by the Worker or Sheriff's Officer. Service may be waived by the court based on a diligent search and Affidavit of Inquiry. See N.J.S.A. 30:4C-17.

Proof /Default Hearing

6-14-2010

A Proof/Default Hearing is a proceeding that occurs after a Default is entered on a case as a result of the parent's failure to appear at the Initial Hearing on the return date of the Order to Show Cause. At this hearing, either Default Testimony or a Certification of Proof and the documentary evidence packet are introduced by the Division.

Default Testimony

6-14-2010

Preparation for a Proof/Default Hearing begins once the court has entered a Default against the parent. The child's current Worker is prepared to testify under oath to the facts supporting the TPR Complaint, including:

- The parent's problems which led to the initial and continuing placement of the child;
- Services provided by the Division to the parent(s) to alleviate the problems and work towards reunification;
- The parent's lack of cooperation with the Case Plan and services, or his or her inability to resolve the problems which necessitated placement, despite services being implemented;
- The visitation arrangements and whether the parent(s) complied with the visitation plan;
- Parent-child bonding issues, if any;
- The Division's exploration of relatives and alternative permanency plans; and
- The Division's permanent plan for the child.

The Paralegal and/or Worker prepare notes that are useful and adequate to prepare for Default Testimony. The record need not be summarized.

Amended Complaint

6-14-2010

If an Abridged Complaint and a Default is entered against a parent, and that parent appears at the hearing to contest the TPR, the Division may, upon the discretion of the GSP DAG, file an amended TPR (Guardianship) Complaint within 30 days of the Initial Hearing on the Order to Show Cause.

Disposition

6-14-2010

N.J.S.A. 30:4C-15.2 requires a Final Hearing For Guardianship to be held within three months from the time the TPR petition is filed in court. Administrative Office of the Courts protocols require a Final Hearing be held within six months. It is important to schedule psychological fitness and bonding evaluations promptly upon the filing of the TPR petition, as specified by the GSP DAG.

CP&P Appealing Adverse Court Rulings

Purpose

6-14-2010

When the Superior Court, Chancery Division, Family Part, or the Appellate Division do not rule in favor of the Division, the following policy and procedures govern appeals of such decisions in all Termination of Parental Rights cases brought by CP&P.

Appealing Adverse Trial Court Rulings

6-14-2010

When the Division receives an adverse decision in the lower court (Superior Court, Chancery Division, Family Part):

- The Local Office Manager or his or her designee, obtains a copy of the Judge's written decision.
- The Local Office Manager or his or her designee, and involved staff (Workers, Supervisor, etc.) meet with the GSP DAG handling the litigation to discuss the appropriateness of pursuing an appeal to the Appellate Division of the Superior Court. (The GSP DAG is not authorized to make any final decisions as to whether to file an appeal. The Division of Law, through either the Assistant Attorney General in Charge of Appeals in the Trenton or Newark Office, is responsible for making the final decision whether an appeal should be filed.)
- After conducting a thorough review of the case, the Local Office Manager immediately sends a written recommendation, along with the entire litigation case file, to the Area Director. The recommendation includes any conflicting opinions regarding pursuit of an appeal. Forward the decision of the Area Director, including the preliminary recommendation of the GSP DAG, to the CP&P Director or his or her designee, who, in consultation with the Director of the Office of

Legal Affairs, makes a recommendation to the Assistant Attorney General in Charge of Appeals.

The Division will have 45 days from entry of the unfavorable order in which to appeal the matter to the Appellate Division of the Superior Court. Hold the initial conference/meeting, as well as all subsequent Division actions, in an expeditious manner in consideration of these strict time constraints.

Appealing Adverse Decisions of the Appellate Division 6-14-2010

If the Division loses a decision in the Appellate Division and the CP&P Director wants to seek Supreme Court review, the procedure above is followed, with one exception:

- The CP&P Director or his or her designee, provides the DCF Commissioner with a case summary, prepared by the Local Office Manager, which contains a copy of the Appellate Division's decision, and the recommendations of the Division and the preliminary recommendation of the GSP DAG representing the Division.
- After providing proper notice to the Commissioner, the CP&P Director makes the final recommendation to the Division of Law whether or not to seek further review of the matter by the Supreme Court of New Jersey.
- A final decision as to any appeal to the Supreme Court of New Jersey is made by the Director of the Division of Law, or, in appropriate cases, the Attorney General.
- Where the Appellate Division decision is unanimous, the Division has only twenty (20) days in which to seek Supreme Court review. Where the decision is split, a 45-day review period applies. Where the decision reviewed by the Appellate Division is interlocutory and not final, a fifteen (15) day filing deadline applies.

Emergent Applications/Appeals

6-14-2010

In all emergent matters, where there is insufficient time to follow the procedures, the participants to the appeals process (i.e., Worker, Supervisor, Paralegal, Local Office Manager or his or her designee, and GSP DAG) utilize conference calls and/or fax and electronic mail to expedite the review and decision-making process.

In rare situations when the Division loses a termination of parental rights case at the trial level, resulting in the immediate or short term return of the children to their parent's care, and there is evidence that the child may be harmed if returned home, the GSP Deputy Attorney General handling the case, after conferring with the Local Office Manager and/or designee, may determine that an immediate appeal is needed to stay the court decision:

- In this instance, the Local Office Manager immediately contacts the Area Director and the CP&P Director's Office, to seek verbal approval to file to stay the court decision and keep the child in his or her current placement until a determination is made on the appeal. Seek approval from the Director, Office of Legal Affairs, if the CP&P Director/designee is not available.
- The GSP DAG recommends approval to the Assistant Attorney General in Charge of Appeals in Trenton or Newark.
- In situations where CP&P staff at the court hearing do not have time to call or cannot contact the necessary local management, he or she has the authority to recommend to the Division of Law, through the GSP DAG, that an appeal and stay of the court decision should be immediately pursued, to assure the safety of the child. The CP&P staff member, through the Local Office Manager, is then responsible to advise the CP&P Director as to whether or not the matter was appealed and, if appealed, the results of the court decision.