

CASE MANAGEMENT: HEARING TIMELINES & CONTINUANCES

Comm'r Kevin Costello
Waukesha County Circuit Court

Hon. Edward Vlack
St. Croix County Circuit Court

Basic Hearing Timelines in CHIPS Cases

- **Remember 30-30-30**
 - Plea Hearing must be held within 30 days after filing petition
 - If contested, Fact-Finding Hearing must be held within 30 days of Plea Hearing
 - Dispositional Hearing must be held within 30 days after Fact-Finding Hearing or entry of admission

Basic Timelines in CHIPS Cases: Permanency Planning

- Will be covered in more detail in Permanency Planning section of training
- Permanency planning and reviews/hearings are required when placed outside the home (including with a guardian), during trial reunifications, and in TPR cases (until adoption finalized)
- Permanency Plan must be filed within 60 days after the child is removed from home
 - §§ 48.38(3) & 938.38(3)



Permanency Review/Hearings Timelines

- Permanency Review – § 48.38(5)(a)
 - No later than 6 months after date of removal
 - Every 6 months thereafter
- Permanency Hearing – § 48.38(5m)(a)
 - No later than 12 months after date of removal
 - Thereafter, the earlier date of:
 - 6 months from prior permanency review
 - 12 months from prior hearing
- Court commissioners may conduct



Continuances

§ 48.315(3):

Court's failure to act within any time period under Chapter 48 does not deprive court of personal or subject matter jurisdiction or of competency to exercise jurisdiction

But...



ASFA/Title IV-E Findings

- Court cannot exclude time or grant continuance if it would result in delay in making:
 - Contrary to the welfare finding (at removal)
 - Reasonable efforts to prevent removal finding (within 60 days of removal)
 - Reasonable efforts to achieve goal of the permanency plan finding (every 12 months)
- See ss. 48.315(2m) and 938.315(2m)



ASFA/Title IV-E Findings – Funding Implications

- **Contrary to the welfare**
 - Finding must be made at hearing authorizing removal or funding cannot be claimed for entire stay in out-of-home care
- **Reasonable efforts to prevent removal**
 - Finding must be made within 60 days from the date of removal or funding cannot be claimed for entire stay in out-of-home care
- **Reasonable efforts to achieve permanency goal:**
 - Finding must be made no later than 12 month after removal and 12 months of the previous finding
 - If not made, Title IV-E funding is only delayed until finding is made



GRANT CONTINUANCES SPARINGLY!

- Remember the primary goals: safety, permanence, timeliness, due process
- Don't grant continuances for convenience or based on stipulation
- If you must grant a continuance, state good cause findings on the record



Continuances: Good Cause Finding

Sec. 48.315(2):

- (2) A continuance shall be granted by the court only upon a showing of **good cause** in open court or during a telephone conference under s. 807.13 **on the record** and **only for so long as is necessary**, taking into account the request or consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases



Continuances: Good Cause Finding

When evaluating good cause under s. 48.315(1) consider following factors:

- (1) Good faith of the moving party,
- (2) Prejudice to the opposing party,
- (3) Prompt remedial action by the dilatory party,
and
- (4) The best interest of the child

See *State v. Robert K.*, 286 Wis. 2d 143 (2005).



Continuances: Additional Considerations

- The only provisions for delays, continuances and extensions are set forth in § 48.315
- Lawyer and litigant scheduling issues may constitute good cause
 - *State v. Quinsanna D.*, 259 Wis. 2d 429 (2002).
- § 48.315 (1) (b) provides for continuances at the request of the GAL. Best practice is to get the consent on the record by the GAL.
 - *State v. Gerald P.*, 288 Wis.2d 659 (2006).



Violation of Time Limits

- Violation of time limits without appropriate findings leads to loss of competency of the court to proceed, not loss of jurisdiction
- Time limits CANNOT be waived
- Loss of competency to proceed is not waived even if it had not been raised at the trial court level
 - See *Sheboygan County v. Matthew S.*, 282 Wis. 2d 150, 698 N.W. 2d 631 (2005).



Case Management Discussion

- Best practice tips from:
 - Faculty Dos & Don'ts
 - Experienced Court Commissioners & Judges
 - New Court Commissioners & Judges



Points to Ponder

In Wisconsin there are:

- 72 counties
- 249 circuit court judges
 - 30 single judge counties
 - 6 (?) counties in which judges go on rotation
 - 36 counties with 2 or more judges that do not go on rotation



Because of that...

While the statutory limits apply statewide, when it comes to Case Management, one size does not necessarily fit all.

What works in Milwaukee County may not work in Rusk County and vice versa.



But...

In EVERY CASE, in EVERY COUNTY, Case Management starts in the first five minutes of the first hearing



And...

In EVERY CASE, in EVERY COUNTY, Case Management should be the last item discussed prior to the conclusion of every hearing.



**QUESTIONS OR
COMMENTS?**