

Hello again and welcome to the next installment of the South Dakota Unified Judicial System Training series. In this video, we'll take a detailed look at the entire process from start to finish and highlight the actions you'll need to take in an abuse and neglect case. This is a whole different area of the law. It's unique and different because of the purposes of this law, which is to get the children back with their parents, caregivers or other permanent living environment as soon as possible.

And there's a very structured way of how all the proceedings go. There are no jury trials in abuse and neglect cases. Rather, the judge is the sole decision maker. Since these are not jury trials, you have to make sure that you understand what the law is in the area and what the obligations are of the state, and what the obligations are of your client.

The burden of proof, of course, is always on the state, and that doesn't change. Many of the rules of criminal procedure do not apply to abuse and neglect cases. It's important for the state's attorney, child's attorney, and parent's attorney to communicate and work towards the best interest of the child. Remember, these proceedings are closed to the public. Once you are appointed, you should notify your client, caretakers, and other parties of appointment of counsel.

Contact the State's Attorney's Office or South Dakota Department of Social Services and obtain all relevant information regarding your client. Obtain copies of all pleadings and relevant notices. Participate in depositions, negotiations, discovery, and pre-adjudicatory conferences. Meet with your client in the appropriate fashion suggested in video two. Investigate to support your client's position. You should conduct thorough, continuing and independent investigations and discovery, which may include, but should not be limited to, reviewing your client's social service, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case.

Review the court files related to the parties involved. Case-related records of social service agency and other service providers. Contact attorneys or other parties and non-lawyer guardian ad litem or court-appointed special advocates, or CASA, for background information. Contact and meet with parents, legal guardians and caretakers of the child with permission of their lawyer. Obtain necessary authorizations for release of information. File timely and appropriate written motions.

Relief requested may include, but is not limited to: a mental or physical examination of a party or the child, a parenting home study or visitation evaluation, an increase, decrease, or termination of contact or visitation, restraining or enjoining a change of placement, contempt for noncompliance with a court order, termination of the parent-child relationship, child support, a protective order concerning the child's privileged communications or tangible or intangible property, request services for child or family, and dismissal of petitions or motions.

You may have to decide whether or not to call the child as a witness. The decision should include consideration of the child's needs or desire to testify, any repercussions of testifying, the

necessity of the child's direct testimony, the availability of other evidence or hearsay exceptions which may substitute for the direct testimony by the child, and the child's developmental ability to provide direct testimony and withstand possible cross-examination.

There are always ways to have a child testify through available technology, and these options should be explored to avoid inflicting further trauma. Please always remember that the child you represent is a victim and is not on trial.

Present and cross-examine witnesses. Offer exhibits and provide independent evidence as necessary. Subpoena witnesses for hearings. Monitor the status of the child and the progress of the parents in satisfying the conditions ordered by the court. Communicate with other parties involved in the case, such as family service specialists, ICWA representatives, CASA volunteers, any medical, educational or psychological professionals, and attorneys for the other parties.

Be proactive in reducing court delays and seek timely decisions that provide permanency for the child. Monitor the implementation of the court's order and communicate to the responsible agency and, if necessary, the court any noncompliance. There are many types of hearings that can take place in abuse and neglect cases, including the following. In order of when they take place, a temporary custody or 48-hour hearing is held to consider evidence to address the needs for continued temporary custody of the child. It is also to determine whether continued temporary custody outside the home is necessary to protect the child.

An advisory hearing is held to inform the respondents of the allegations, their rights, and the process of an abuse and neglect case. Respondents are advised of rights, admit or deny the allegations and are advised of future hearings.

Advisory, adjudicatory and dispositional hearings are held when respondents are advised of rights, admit and disposition is held.

Adjudicatory plea is held when respondents admit or deny the petition. An adjudicatory hearing is held to determine whether the allegations of the petition that a child is abused or neglected, are supported by clear and convincing evidence. Testimony is given. Adjudicatory hearings are held when respondents are advised of rights at previous advisory hearings, admits or the petition is sustained at trial. A disposition is held for the court to determine the custody, placement and care of the child, both short-term and ultimately on a permanent basis.

A review hearing, also known as interim dispositional, takes place after adjudication and before final disposition and provides the court an opportunity to comprehensively review the progress made by the parties since the prior hearing.

A dispositional conference conducted pretrial focuses on the real dangers of abuse or neglect, which necessitated court intervention and resolves the issue relative to disposition. The judge

assigned to the case may participate in the conference. Once respondents admit allegations in a dispositional or permanency hearing, the court makes a determination in regard to the placement and care of the child, both short-term and ultimately on a permanent basis.

A permanency hearing is a hearing to determine the permanent plan based on the Department of Social Services' recommendations, which is in the best interest of the child. The initial permanency hearing is held no later than 12 months after the child enters foster care, and are held every 12 months thereafter.

During the course of the hearings listed before this, a motion hearing can also take place at any time.

A motion hearing, non-ICWA, allows a judge to consider motions filed in the case. A motion hearing ICWA allows the judge to consider motions filed in the case as pertaining to the Indian Child Welfare Act, or ICWA.

Compensation. In abuse and neglect cases, you should receive adequate and timely compensation throughout the term of appointment that reflects the complexity of the case and includes both in-court and out-of-court preparation, participation in case reviews and post-disposition hearings, and involvement in appeals. Also, you should have access to or be provided with reimbursement for experts, investigative services, medical records, service of process, and transcripts of hearings, as requested.

The circuit judge will review requests for compensation for reasonableness based on the complexity of the case and the hours expended. The State of South Dakota has set a uniform level of compensation for attorneys appointed by the courts to represent children. Interim billing is encouraged. More can be learned about this on the website component of the video series.

Termination of Attorney Duties. Your obligation to represent the child continues through the life of the case and ends at the time the court closes the case. Your obligation to represent the parent or adult client is until the final disposition. At that point, you should consult with the court as to any continued representation.

Please refer to the resources page on the UJS website for additional information.