

**BEST PRACTICES IN
TERMINATION AND ADOPTION CASES**

**A Report from the Best Practices in Adoptions
Workshops**

A Project of the Georgia Model Courts Project

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[NOTE: The Georgia Model Courts Project is a project of the Georgia Council of Juvenile Court Judges, operating under the guidance and direction of the Permanency Planning Committee of CJCJ, and is supported by staff and other funding from the Georgia Supreme Court Child Placement Project. The Project also receives technical and other support from the Permanency Planning Department of the National Council of Juvenile and Family Court Judges, and a great

deal of assistance from all of its partner agencies, a representative listing of which is shown on the addendum to this Report.]

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A. Introduction.

On May 11, 2002, a group of more than forty child welfare professionals met in LaGrange, Georgia to review current practices relative to termination of parental rights and adoption in deprivation cases, and to begin to identify best practices designed to move children to permanency through adoption more timely and efficiently. Out of that group was formed a workgroup (herein referred to as the "Workgroup"), whose responsibility it was to review the work of the larger group and identify specific practices and ideas for consideration by the larger group. The Workgroup, consisting of the following participants, met in Atlanta on July 24, 2002:

Judge Michael Key, Troup County Juvenile Court
Judge Van Banke, Clayton County Juvenile Court
Judge Velma Tilley, Bartow County Juvenile Court
Sandy Gobel, Supervisor from Cobb County Department of Family and Children Services
Sheila Waterman, from the Office of Adoptions
Mary Hermann, from the Child Advocates Office of the Fulton County Juvenile Court
Tania Brooke, Supervisor from the Troup County Department of Family and Children Services
Lori Bramlett, Model Court Coordinator

Also contributing to the work of the Workgroup was Tammy Reed, Region Adoption Coordinator for the Office of Adoptions.

Working from notes made by Lori and from the collective memory and experience of its members, the Workgroup began the process by discussing where in the process the best practices should begin. Then, we followed the process through, step by step, until final adoption. An initial report was drafted, disseminated to the members of the Workgroup, modified in response to comments from the members of the Workgroup, and submitted to all of the attendees of the May workshop. On December 6, 2002, the original group, with some noteworthy additions, met in Dublin, Georgia. Consensus was reached as to most of the report. All of the agencies represented in the project were asked to review the final draft and to note their exceptions, all of which are shown on Exhibit "A". A complete list of persons and agencies represented at the two workshops is appended to this Report.

B. Resource Guidelines of the National Council of Juvenile and Family Court Judges.

Before getting into the Georgia-specific best practices set out in Section C of this report, we would like to commend to you the two resource guidelines developed and published by the

National Council of Juvenile and Family Court Judges (“NCJFCJ”). The first guideline is entitled *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (referred to herein as the “Resource Guidelines”). That book sets out best practices in the handling of child abuse and neglect cases from the beginning of a case until permanency is achieved. The Resource Guidelines served as the basis for the Aspirational Guidelines adopted by the Council of Juvenile Court Judges (“CJCJ”), which, together with the Resource Guidelines, serve as the foundation for court improvement under the Georgia Model Courts Project. The second book, *ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practices in Child Abuse and Neglect Cases* (referred to herein as the “Adoption Guidelines”), builds on the Resource Guidelines and focuses on adoption and other alternative permanency options. Every model court in Georgia is committed to making its best efforts to comply with the Resource Guidelines, the Aspirational Guidelines, the Adoption Guidelines, and, now, these Best Practices in Termination and Adoption Cases.

The Adoption Guidelines point out the following five issues covered by the Resource Guidelines that are important to the effective implementation of the Adoption Guidelines:

- ▶ Early identification and involvement of absent parents;
- ▶ Early identification and involvement of relatives;
- ▶ Ensuring availability of quality plans and services to the family to assist with reunification;
- ▶ Complying with the Interstate Compact on the Placement of Children; and
- ▶ Complying with the Indian Child Welfare Act.

Resource Guidelines, Page 10.

Although all five of the foregoing issues are important, the first three are involved in all cases, whereas the last two issues arise only in a limited number of cases. Before beginning to discuss the best practices in termination and adoption cases, it would be worthwhile to include direct quotes from Pages 10 and 11 of the Adoption Guidelines:

C. Early Identification and Involvement of Absent Parents. At the very first hearing on a petition alleging abuse and neglect, efforts should begin to include all parents involved in the life of the child and to locate absent parents. Putative fathers must be located and brought into the court process as quickly as possible. Timely resolution of paternity issues is both in the best interest of the child and essential to avoiding delays at subsequent points in the court process. The Court must ensure that the efforts of the child welfare Agency are thorough and diligent in locating and involving all legal and putative parents.

“Early Identification and Involvement of Relatives. It is equally important, particularly when a child must be removed from the home, to identify all relatives of the mother, father, or putative father(s) and to investigate all of these relatives as potential caretakers for the child. Courts should not make the presumption that because the parents have serious problems, all of the relatives must also have serious problems. Relatives generally know the child better and often have a familial commitment to the care of the child. An appropriate relative who is willing to provide care is almost always a preferable caretaker to a non-relative.

“When courts and agencies have not conducted thorough relative searches and reunification is ruled out, they can be faced with the difficulty of deciding between adoption by a foster parent with whom the child has bonded and a relative who is appropriate but did not previously know of the child’s need for a permanent home. If, however, the relative search was thorough and a relative who has previously chosen not to come forward changes his or her mind, the preference for keeping the child with relatives diminishes. When courts and agencies do their job thoroughly, they should not have to choose between a foster parent adoption or a relative adoption.

“Ensuring Quality Plans and Services are Available to the Family to Assist with Reunification. If the needs of a child and family have not been thoroughly assessed and appropriate services made available to families to assist with reunification, the parents may have a valid argument at the permanency hearing that reasonable efforts have not been made to reunify them with their child. This situation can cause a significant delay in achieving permanency for the child by delaying the child’s reunification, delaying the Court’s ability to terminate parental rights, or setting up the possibility of reversal by the court of appeals.”

The Adoption Guidelines also suggest the use of the following tools to promote timely adoptions: concurrent planning; foster-adopt homes; and family decision making. Each of these issues should be studied in more detail by the individual courts and determinations made as to how these tools could be used in their communities.

The Adoption Guidelines serve as a great backdrop to the best practices set out herein in Section C, and should be read and implemented in combination with the best practices. Although the individual works have value independently, the most benefit will be achieved when used together.

C. Best Practices in Termination and Adoption.

Following are the best practices adopted by the participants of the Model Courts Project:

3. **How does a case move to termination and adoption?** There are two ways that a case can move to termination and adoption. One way is in those rare cases where a thirty-day case plan is filed that does not contain a plan for reunification. In those cases, a permanency hearing must be held within thirty days. The more common way a case

moves to termination and adoption is where there is a reunification plan in place, and the decision is made at some point along the way that reunification is not likely and that the case should move to an alternative permanency plan, i.e., permanent relative custody, legal guardianship, termination and adoption, or another planned permanent living arrangement. No matter which road we take, the roads converge at some point and the process is the same.

4. **What triggers the best practices in termination and adoption?** In those rare cases where a reunification plan is never filed, it is the decision not to file a reunification plan that triggers these best practices. In those cases where a reunification plan is in place, our time frames are triggered by adoption following termination becoming the primary plan. At some point, whether we have only a reunification plan, or whether we have a concurrent plan, a casemanager makes a determination that successful reunification is not the likely outcome in the case.
5. **How and when should the decision to move to termination and adoption be made?** Evaluation of the likelihood of reunification should be an ongoing process, rather than just something that is done as part of a review of the case or case plan preparatory to a periodic review. The appropriateness of the permanency plan should be reviewed internally by the Agency not less than monthly and that review should be documented in the file. The specific method of review should be decided by the individual county, but there should be a specific policy.
6. **What is involved in staffing a case, and when should it be done?** From the time the decision is made by a casemanager that reunification is not likely, the case should be staffed within a reasonable time following that decision. What is meant by “staffed” will vary from county to county. In some counties, staffing means the casemanager going into the office of the supervisor and discussing the case. In other counties, there are formal, regularly scheduled staffings of cases in a group setting. However it is done in any given county, the staffing needs to be systematic, not left to chance, and the official decision to move to termination and adoption needs to be made within a reasonable time following the time the casemanager makes the realization that reunification is not likely, but, in any event, within thirty days. Where the Agency does not move to termination and adoption without review by the Special Assistant Attorney General representing the Agency (herein referred to as the “Agency Counsel”), that review should also be completed within the thirty days.
7. **When should the case be turned over to the Agency Counsel.** From the time the case is staffed and a move to termination and adoption approved within the Agency, the case should be turned over to the Agency Counsel within thirty days. In some counties, either the Agency, the Court, or both, prefer to send a case to a panel for review prior to moving to termination. In those counties, the case should be submitted to Agency Counsel and panel concurrently. Also, in those counties, the internal agency review process should be coordinated from a timing standpoint so as to not cause delays by having to wait for the

panel to convene. The panels should be receptive to doing interim reviews when requested to do so to avoid delays in the Agency moving forward with termination.

8. **What can be done to avoid delays once the case has been turned over to the Agency Counsel?** There is now a standard packet to be used to turn a termination case over to the Agency Counsel. If the packet is complete and accurate, the Agency Counsel should be able to move forward with termination without delay. The use of the standard packet, properly completed, is, in and of itself, a best practice.
9. **At what point should reunification services be discontinued?** The best practice is to continue to offer reunification services until the petition to terminate parental rights is heard unless there is a specific finding by the Court that continuation of reunification efforts is, in fact, detrimental to the child. This is a high threshold that should not be compromised. Discontinuation of reunification services is not a condition precedent to the filing of a termination action and, in fact, discontinuation of reunification services prior to termination seems to be in disfavor with the Court of Appeals. The Workgroup believes that, unless actual harm would result to the child, reunification services should continue to be offered up to the time parental rights are terminated. There was some concern expressed about this practice making for unnecessary work for the Agency and the panels. However, the reunification plan is already in place and all that has to be done is to monitor progress. Also, in most of these cases, the parents are not, in fact, accessing the services offered anyway, so there is not a lot of work involved in offering and monitoring services. We believe that the value in offering the services and the impact that may have in the appellate courts outweighs the disadvantages of continuing to offer services. This approach also allows us to avoid the necessity of having a permanency hearing except in cases where it is absolutely necessary, that is where actual detriment to the child can be clearly established. Keep in mind also that, if the time frames proposed herein are met, we are not talking about continuing to offer the services for an extended period of time.
10. **When must the Agency Counsel file the Petition to Terminate Parental Rights?** Under guidelines established by the Attorney General, the Agency Counsel has 30 days to file the Petition from the date he or she receives the termination packet from the Agency. By agreement between the state Agency and the Attorney General, if the Agency Counsel does not perform timely, the county director should contact the area director who should contact the Director of Legal Services for the Division of Family & Children Services to report that failure. This is not an issue of “snitching”- it is an issue of system oversight.
11. **What can the Court do to ensure that petitions are timely filed?** Each court should put oversight in place for review to ensure compliance with the 30-day time frame set out in the preceding section. Because of the multitude of ways things are done around the state, the Workgroup could not reach a consensus on a specific way for the Court to exercise oversight in this area. One way is for the Court to be notified by the Agency when a termination packet is sent to the Agency Counsel, and for the Court to set the case

down for a status call immediately following the expiration of the thirty day period. The case can come off the calendar if it is filed, or the Court could leave the case on the calendar to exercise other oversight responsibilities, such as making certain that counsel is timely appointed, etc.

12. **When should the hearing be set?** The Court should set the hearing date at the time of filing the petition. This is the Court's responsibility. Recognizing that there are all sorts of issues involved in setting a case (not the least of which is scheduling conflicts), the case should be set down at the earliest possible date, monitored by the Court for readiness for trial, and continued only when necessary. There are ways that the Court can avoid scheduling conflicts. One is to work out an arrangement with the Superior and State Courts, which is where the majority of conflicts occur, whereby, on certain days of the week or month, termination of parental rights cases will have priority.
13. **What can be done to avoid service related delays in the trial?** The Court needs to hold the Agency and the Agency Counsel to a high standard in terms of making a diligent search for the parents. Where the Agency alleges that the parent cannot be located and service by publication is necessary, the publication affidavit should be reviewed carefully before the Court allows publication notice instead of personal service. There are certain minimum requirements in the policy manual. The Workgroup agreed that a model form should be adopted around policy and good practice. Evidence should be submitted that the Agency has used the Federal Parent Locator Service. With the advent of web-based data bases, it is easier to locate people than it has ever been. Every relative of the missing parent, whose contact information can be found, should be contacted. The floor for the standards in regard to making a diligent search should be the policies, and whatever is reasonable beyond that. If a hearing needs to be held by the Court before allowing publication notice, then the hearing should be held within ten days from the filing of the petition.
14. **When should the termination of parental rights hearing be held?** The termination of parental rights hearing should be held within 45-60 days in personal service cases, or 90 days in publication cases.
15. **How can the Court ensure effective representation of parents and children?** Wherever possible, the same attorney should represent each party and the same guardian ad litem (whether attorney, lay, or both) should represent each child throughout the process. The Court should appoint attorneys upon the filing of the petition, and get a copy of the petition to the attorney immediately upon appointment. The parents should be advised as to the name and contact information for their attorney in the summons package.
16. **What can be done to avoid delays in trial?** Most delays are caused by scheduling conflicts and service issues. The Court should work with attorneys and other judges to establish local protocols to avoid scheduling conflicts, and the Court should deal with

service upon the filing of the Petition, and put systems in place to monitor service so as to avoid delays. There are so many things that can cause delays, it is difficult make an exhaustive list of practices to avoid them. The best practice is that delays and continuances should be minimized systematically and not left to chance.

17. **Should the Court conduct pretrial conferences?** The Court needs to exercise oversight relative to the preparedness of cases for trial so as to avoid unnecessary delays, and conduct pre-trial conferences as necessary. Judge Jim Morris has produced a good checklist for pre-trial conferences that we will distribute, a copy of which is appended to this report.
18. **What can be done to avoid lawyer conflicts?** The Workgroup believes that lawyer conflict rules should be changed so that only a jury trial scheduled more than thirty days prior to the termination of parental rights case being set will take precedence over the trial of a termination of parental rights case. The Attorney General's office should be requested to assure that the contract with Agency Counsel gives priority to termination cases over conflicts in other cases.
19. **What should be done when a termination case has to be continued?** If a case has to be continued, the new date of trial should be set in court and everyone should be served before they leave court.
20. **What are the time frames for getting orders terminating parental rights signed and filed?** Where the Agency Counsel drafts the order for the judge, the order should be drafted and submitted to the judge within fifteen working days following the hearing. The judge should review and modify the order, and file it within one week following receipt from the Agency Counsel. When the judge drafts the order, the order should be completed and filed within thirty days following the date of the hearing.
21. **What is the Court's responsibility to make the Office of Adoptions aware that a termination of parental rights order has been entered.** By statute, the Juvenile Court clerk should send orders terminating parental rights to the Office of Adoptions within fifteen days following entry of the order. Note that Agency policy encourages that county Agencies register children without identified adoptive resources with My Turn Now photo listing when they notify the Office of Adoptions that a child is free, which is five to twelve days following termination.
22. **What is the responsibility of the Office of Adoptions to keep the Court informed of the identity of children not adopted.** Although the Court, through its post-termination reviews, should have a good idea of the identity of children available for adoption, the participants agreed that, in order to assist the Court with its oversight responsibilities, the Adoption Office should provide to each judge a list of all children from that county awaiting adoption at least annually. However, there was a recognition that there are

currently some policy and, perhaps, legal, barriers to implementing this practice, but that we should work to eliminate those barriers.

23. **When can the Agency submit a request to the Office of Adoptions for funding a life history (adoption study)?** The Agency can now submit to the Office of Adoptions a request for funding for the life history (adoptions study) at the time the package is submitted to Agency Counsel. The best practice is for the county to decide at the time the package is submitted to Agency Counsel whether it will be done in-house or done on contract. If by contract, the funding request should be submitted to the Office of Adoptions at the time the package is submitted to the Agency Counsel. In any event, the life history must be done within sixty days following termination of parental rights of either parent.
24. **What can be done to speed up the adoption study?** It is recommended that the Agency use the same resource for First Placement/Best Placement and for the adoption study when possible. Agencies should, when possible, contract for the First Placement/Best Placement study only with providers that also are approved to do the adoption study. Agencies should develop a pool of providers to ensure that all required studies are completed timely.
25. **When should post-termination judicial reviews be conducted?** Post-termination judicial reviews should be conducted not less frequently than every three months following termination. The date for the initial review should be set at the disposition hearing and included in the order.
26. **Within what time frame should the Form 33 be signed?** The form 33 is the Adoption Placement Agreement. The time frame depends on whether there is an identified adoptive resource. From the time of the entry of the order, 105 days is the maximum time under regulations to get the Form 33 signed by the adoptive parent. Best practice is get the Form 33 signed within 90 days. The permission to file for adoption should be given to the adoptive parents the day that the Form 33 is signed. The attorney should have been identified by the time the Form 33 is signed, and the adoptive parents should contact the attorney within two weeks. Immediately upon receipt of the permission to file, the attorney calls the County Director. The County Director should prepare the package within five working days after notification from the attorney. Actually, in a foster/adopt adoption case, there is no reason that the Form 33 could not be issued within 30 days from the time the termination order is filed. For a child who does not have an identified adoptive resource, the only time limits that can be set are those for completion of a child's life history and the submission of the child's pictures. The best practice would be to submit pictures at the same time they register the life history. Please note that these time frames do not apply to foster and foster/adopt adoptions. Where the child is placed with a new adoptive family, the Agency must supervise the placement, usually for six months, before the release is given.

27. **When should the search for adoptive resources begin?** The search for relatives willing to adopt or take permanent relative custody should be initiated at the very beginning of the case. The initial placement within a foster home should be made taking into account the likelihood of successful reunification, and the willingness of the foster parents to adopt. Recruitment efforts should begin in earnest as soon as the decision is made that termination is a plan, even a concurrent plan.
28. **What efforts should be made to identify adoptive resources?** County Agencies should contact the State Adoption Exchange, their regional adoption coordinator, other resource development workers, and private adoption agencies under contract with the Office of Adoptions to solicit family assessments for their children. County Agencies should schedule children for video-conference and Wednesday's Child appearances. County Agencies should make a Tale of 2 States Liaison referral so that a search for families can be made nationwide. All of this should be completed prior to the first judicial review, which again is not later than three months following termination. Once family assessments are received by a county Agency, they should be reviewed and, if at all possible, a family selected within thirty days.
29. **What can be done about relatives who surface at the last minute, either just prior to the hearing on the petition to terminate parental rights or after termination, but prior to disposition?** The only acceptable practice is to conduct relative searches (including relatives of legal and/or biological fathers) early in the case so as to exhaust all potential relatives long before even the filing of the petition to terminate parental rights. The Court should accept responsibility to ensure that relatives are identified early in the case, and clear, effective policies should be put in place by the Court and the Agency. One option is to require that a complete family tree is developed as part of the First Placement/Best Placement study.
30. **Is "best practices" the same as reasonable efforts?** It should be kept in mind, although most of these practices have reasonable efforts implications, the Agency does not need to meet these standards in order to be determined that the Agency has made reasonable efforts.

D. Conclusion.

The foregoing best practices may be similar to what many courts in Georgia are already doing, but just as likely may be very radical departures from current practices in many of our courts. The Model Courts Project stands ready to help any court or community implement these practices, and also welcomes input and feedback from courts outside the Project. These best practices are a work in progress and will be reviewed by the Model Courts Advisory Committee and its partners in the Model Courts Project once or twice per year for a period of time as the practices are implemented by courts involved in the project. Please provide comments and feedback to aid in the refinement of these best practices.

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