OPD OFFICE OF THE PARENT DEFENDER

TUESDAY'S TIP #2

Welcome to a new feature on our listserv – Tuesday's Tip. Each Tuesday, our office will share a tip that you can apply to your cases right now. I encourage you to save each tip in a folder so that if you're faced with the same situation in a future case, you have this handy resource available to you. These will also be available on our website as a counsel resource.

Situation: Your incarcerated parent is forgotten or not engaged.

The Problem: Other than an occasional letter from the social worker, the client knows nothing about what is happening in their case with their children.

Law: The Juvenile Code prefers reunification with a parent, followed by relative placement. NCGS § 7B-903, -904, -906.1, -906.2. DSS is obligated to provide reunification efforts for both parents. See also ACF's Child Welfare Practice With Families Affected by Parental Incarceration.

Action Steps:

1. Meet with your client. Ask them whether they want to attend the hearings. Ask about relative placements and contact information.
2. Talk with the client's case manager. Find out what services are available or that the client has completed.
3. File a writ to have your client brought to court (if your client is attending). [In some counties, the clerks issue writs, in others the parent attorneys do so.]
4. File a motion for visitation and a case plan. [Sample on our website.]
5. Talk with the social worker as to whether they're using best practices in maintaining relationships.
6. Object to items on a case plan that are not related to removal conditions and that your client cannot complete while incarcerated. [Do they really need to obtain employment or housing?]
7. Review any restrictions imposed by the criminal case and advocate that the juvenile judge have authority to review contact.
8. At the very least, advocate for phone calls and video calls between parent and child.
9. Have your client sign up for improvement programs and advocate that those qualify for a similar requirement. Show you're being productive with your time.
10. Have the order include regular updates regarding the child's progress and development. See if they can be included by phone on teacher-parent conferences and medical appointments.
11. Is email available? Set it up for both yourself, the foster parent, and social worker.
12. Get active early. Be professionally assertive.
13. Getting mitigated sentencing would be a reasonable effort.
14. Pre-trial detention – avoid TPR as it is a constitutional violation. Many cases are dismissed or not processed. Miscarriage of justice argument. Due process argument: have to wait until released & have an opportunity to meet plan; require the state to release the parent; and require DSS to prove the crime in the TPR. Use Matthews v. Eldridge test: Private Interest: Lassiter, Santosky, Risk of Erroneous Deprivation: difficulty of proof.
15. Jails/prisons objecting to child visits: get PLS involved as constitutional right to parent.

Conclusion:

Don't let your incarcerated client be a fly on the wall. Get them involved!

Is this something that you can implement? Feel free to email me directly with requests/suggestions for future Tuesday's Tip!

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