

**STANDARDS OF PRACTICE FOR
PARENT’S ATTORNEYS IN STATE
INTERVENTION CASES:
FOCUS ON EARLY
INTERVENTION OF COUNSEL
SUPPLEMENTARY MATERIALS**

Submitted by:

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**Standards of Practice for Parent’s Attorney’s in State Intervention Cases:
Focus on Early Involvement of Counsel**

Supplemental Materials

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PRELIMINARY PROCEEDINGS CHECKLIST

PRELIMINARY PROCEEDINGS CHECKLIST

CLIENT:

DATE:
Page:

CONDUCT AN IN-PERSON INTERVIEW OF THE CLIENT IMMEDIATELY UPON THE ENGAGEMENT OF COUNSEL

- Request a second call to properly consult with the client.
- Oppose on the record the conduct of any hearing for which the attorney and client have not had sufficient time and adequate conditions with which to prepare.
- Explain the role of counsel, the Judge, the County Attorney, the AFC and the presentment agency.
- Explain the confidential nature of attorney-client conversations.
- Instruct the client not to make statements to anyone concerning the case.
- Explain the agency's allegations.
- Ascertain the client's version of the events leading to the removal or threatened removal of the child and/or the allegations contained in the petition:
_____ (___ Additional Sheet Attached.)
- If the child has been removed, determine:**
- Services provided prior to removal or intervention:
_____ (___ Additional Sheet Attached.)
- Services that could have prevented a removal:
_____ (___ Additional Sheet Attached.)
- Other Services needed by the child or client:
_____ (___ Additional Sheet Attached.)
- Alternatives to removal, including relative placements; in-home services; or removal of an alleged perpetrator: _____ (___ Additional Sheet Attached.)
- Current efforts to reunify the family: _____ (___ Additional Sheet Attached.)
- Family history including identify of prior caretakers of the child:
_____ (___ Additional Sheet Attached.)

Client's concerns about placement:
_____ (Additional Sheet Attached.)

Client's position, including short and long-term goals:
_____ (Additional Sheet Attached.)

Current visitation and the client's desires concerning visitation:
_____ (Additional Sheet Attached.)

Obtain signed releases by the client for all relevant records.

Advise the client of the potential use of this information and any privileges that apply.

Advise the client about the merits of the case.

Explain what will happen at the hearing, the potential results and legal consequences.

ADVISE THE CLIENT OF CONSTITUTIONAL, STATUTORY & REGULATORY RIGHTS

Revoke any waivers of rights or releases of information pending the advice of counsel.

Advise the client of constitutional, statutory, and regulatory rights.

Counsel the client concerning the relative advantages and disadvantages of invoking each right, including but not limited to:

The right to refuse entry by an agent of CPS or law enforcement without a court order.

The right to refuse to speak to an agent of CPS or law enforcement.

The right to refuse testing for drug or alcohol use.

The right to have an attorney or advocate at any conference or meeting with an agent of CPS or law enforcement.

The right to refuse to sign releases for information about the client or the client's child.

The right to refuse to sign a temporary removal by consent.

Consider the various factors to determine whether the client should waive any rights:

The pendency of or potential for criminal charges and the severity of the potential punishments:

The weight of the known and possible available admissible evidence in support of the presentment agency's theory of the case:
_____ (Additional Sheet Attached.)

Whether the child has been removed, and, if so, whether there has been a "pre-adoptive placement" , relative, or other type of placement:

Whether leniency, such as an ACD or the return of a removed child, in exchange for cooperation with CPS is a realistic enforceable expectation:

Whether a petition has already been filed:

The type and severity of the factual allegations:
_____ (Additional Sheet Attached.)

Obtain informed consent of client for any right waived:
_____ (Additional Sheet Attached.)

ASSESS THE CLIENT'S NEEDS AND SECURE APPROPRIATE SERVICES

Make or obtain an assessment of necessary and appropriate services.

Secure or make timely referrals to appropriate service providers. [18 N.Y.C.R.R. 423.2](#).
_____ (Additional Sheet Attached.)

ENFORCE THE CLIENT'S RIGHT TO AN "IMMINENT RISK HEARING"

Assert and protect the client's right to an imminent risk hearing pursuant to Family Court Act §§1022, 1027, or 1028; **OR**

Obtain informed consent for the client's waiver (specify):

Assert the client's rights to:

- Proper notice of the hearing.
- Right to counsel.
- Right to the effective assistance of counsel.

- ___ Right to a continuance to:
 - ___ For proper notice.
 - ___ Allow the client to appear.
 - ___ Allow the client and counsel to prepare.

Imminent Risk Hearing Preparation

- ___ Conduct a preliminary factual investigation.
- ___ Serve a Demand For Discovery and Inspection
- ___ Ascertain the client's goals and the best strategy for achieving those goals.
- ___ Develop a theory of the case.
- ___ Prepare the client for the hearing, if the client chooses to testify.
- ___ Identify and interview potential witnesses.
- ___ Prepare the witnesses for the hearing.
- ___ Subpoena documents and/or witnesses to court.
- ___ Identify relatives, friends, or other persons as potential placement or custody options.
- ___ Request a suitability determination of proposed alternative placements.
- ___ Consult with available experts to determine what services should be provided to prevent removal or facilitate reunification.
- ___ Identify and locate preventive service providers available to testify.
- ___ Prepare Direct and Cross-Examination questions for all anticipated witnesses.

Imminent Risk Hearing Issues

- ___ Jurisdictional sufficiency of the allegations in the petition.
- ___ Adequacy of notice provided to parties.
- ___ Necessity of removal based upon safety factors only.
- ___ Reasonable efforts that can be made to prevent removal or allow for return.
- ___ Balance between the alleged imminent risk of harm to the child from remaining with the client and the harm removal might cause the child.
- ___ Alternatives such as release to the non-custodial parent; relative placement; intensive

in-home services.

- Whether it is in the best interests of the child to remain with the client.
- Whether the placement proposed is the least disruptive and most family-like setting that meets the needs of the child.
- Arrangements for visits with client and siblings if the child is to be placed or remain out of the home.
- Plan for return of the child if placed out of the home.

Conclusion of the Imminent risk Hearing

- Request a written court order for all necessary services.
- Request that the agency place on the record a statement of all services it asserts are required to prevent a removal or for the child to be returned.
- Challenge unnecessary supervision and restrictions on visitation (advocating for the least intrusive supervision).
- Advocate for the most liberal and extensive "Family-Friendly" visitation (not limited by case worker availability).
- Request an order directing a court ordered placement or an agency investigation of relatives and suitable individuals to be considered for placement.
- Request scheduling and notice of case plan meeting.
- Request the date and time for the fact-finding and permanency hearings.
- Assert privileges and confidential relationships.

Post Imminent Risk Hearing

- Advise the client of the right to appeal an adverse temporary order.
- Assist the client with effectuating an intermediate appeal of an adverse order.
- Monitor the implementation of temporary orders.
- Ensure agreed upon or court ordered services are being provided.

File appropriate motions for:

- Assertion of privileges and confidential relationships.
- Non-respondent parent; relative; or other suitable person placement of children.
- Appropriate Visitation (least restrictive and maximum hours/days possible appropriate).
- Dismissal of the petition (or striking of one or more allegations).
- CPLR discovery.
- Admission, exclusion, or limitation of evidence.
- Services, including (but not limited to):
 - Assessments (Psychological and Substance Abuse)
 - Housing
 - Case Management Services
 - Mental Health Counseling or Treatment (Individual & Family)
 - Substance Abuse Treatment
 - Parenting Skills Training
 - Parent Aid
 - Parenting Coach
 - Visitation
 - Anger Management classes
 - Domestic Violence Counseling or Classes
 - Transportation
 - Medical Insurance
 - Income maintenance
 - Other:
- Modification of any intermediate order of placement, visitation or order of protection.
- Terminating placement.

**APPLICATION FOR RETURN OF
CHILD TEMPORARILY REMOVED
FROM HOME**

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF**

In the Matter of

Docket No.
FF #

**APPLICATION FOR RETURN OF
CHILD TEMPORARILY REMOVED
FROM HOME**

(A) Child(ren) under the Age of Eighteen Years
Alleged to be Abused Neglected by

Respondent(s)

TO THE FAMILY COURT:

- 1. I am the (Attorney For the) (Respondent) in the above-entitled proceeding.
- 2. The following child(ren)[specify]: (was)(were) temporarily removed from the place where the child(ren) resided on [specify date]:
- 3. The child(ren) (was) (were) removed [Check One]:
 - By order of the Family Court, dated [specify]:
 - Upon the Respondent's written consent;
 - On an emergency basis without a court order.
- 3. A petition (has)(has not) been filed under Section 1031 of the Family Court Act.
- 4. No previous application has been made to any court or judge for the relief requested herein, (except)[specify]:

WHEREFORE, I respectfully request a hearing regarding the return of the child(ren).

Dated:

Respondent _____ Address & Phone: _____
 Attorney _____ Address & Phone: _____

TO: Clerk of the Court
Presentment Agency
AFC

**ORDER TO SHOW CAUSE ON
MOTION FOR ORDER DIRECTING
RELATIVE PLACEMENT**

At a term of the Family Court of the State of New York,
held in and for the County of _____,
at _____, New York
on _____

P R E S E N T:
HON. _____
Judge

In the Matter of

Family File No.
Docket No.

A Child(ren) Under the Age of 18
Alleged to be (Abused) (Neglected) By

**ORDER TO SHOW CAUSE
ON MOTION FOR ORDER
DIRECTING RELATIVE PLACEMENT**

Respondent(s)

An Affirmation [and other specified supporting documents] having been filed with this Court on [specify date] by [specify the Affirmant and/or relative's name(s) and describe the relationship of each to the parent and child] requesting an Order, pursuant to Section 1028-a of the Family Court Act, directing the presentment agency to commence an investigation of the relative's home within 24 hours; and thereafter ordering the above-named child(ren) to reside with such relative; and

;

Upon examination of the Affirmation [and support documents] of [specify] and after giving due consideration to the best interests of the child(ren),

NOW, it is therefore:

ORDERED, let the presentment agency, Attorney For Child, [and specify name of Co-Respondent] show cause before this court on the ____ day of _____, 20____ why an order should not be made:

1. Directing the presentment agency to complete an investigation into the suitability of the [specify the name(s) of the relative(s) as a placement for the child(ren)] and to report its findings to the parties, the attorney for the child and the court forthwith; and
2. Placing the child(ren) with [specify the name(s) of the relative(s)]; and it is further

ORDERED, that pending the first appearance upon this Order to Show Cause, the presentment agency shall commence its investigation into the suitability of the said relative(s) as a suitable placement within 24 hours.

Dated:

ENTER

Judge of the Family Court

**AFFIRMATION IN SUPPORT OF
MOTION FOR ORDER DIRECTING
RELATIVE PLACEMENT**

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF**

In the Matter of

Family File No.
Docket No.

A Child(ren) Under the Age of 18

Alleged to be (Abused) (Neglected) by

**AFFIRMATION IN SUPPORT OF
MOTION FOR ORDER
DIRECTING RELATIVE PLACEMENT**

Respondent(s).

I,

hereby respectfully affirm under the penalty of perjury as follows:

1. I am an attorney licensed to practice in the courts of the State of New York, duly admitted on with offices at
2. I represent the Respondent who is the parent of the subject child(ren) who (has)(have) have been removed from (his) (her) care and custody.
3. As such, I am fully familiar with the facts and circumstances of this case.
4. I make this Affirmation in support of the Respondent's motion for an order directing:
 - a. An expedited investigation by the presentment agency into the suitability of [specify the name(s) and relationship(s) to the subject child(ren)] to serve as a relative placement herein;
 - b. A report to the parties, the attorney for the child and the court concerning its findings; and
 - c. The placement of the subject child(ren) with the said relative(s).
5. I make this Affirmation upon information and belief, the sources of which are:
 - (a. My interview of the Respondent;)
 - (b. My interview of the said Relative(s);)
 - (c. My review of the petition and supporting documents herein;)
 - (d. My review of the present agency records herein;)
 - (e. My conversation with the (agency case worker) (attorney for the child);).

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6. Upon information and belief, the said relative(s) appear to be suitable to serve as (a) relative placement (s), requiring the presentment agency to investigate their suitability within 24 hours pursuant to Section 1028 of the Family Court Act.

WHEREFORE, your Affirmant respectfully requests:

1. An order directing an expeditious investigation into and report on the suitability of the said relative(s) to serve as a placement for the child(ren);
2. A hearing upon this request in the event that the agency considers the relative(s) to be unsuitable; and
3. Such other relief as the court finds just and proper.

Affirmed By

On / / .

**AFFIRMATION IN SUPPORT OF
MOTION FOR ORDER DIRECTING
SERVICES**

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA**

In the Matter of _____

Family File No.
Docket No.

A Child(ren) Under the Age of 18
Alleged to be (Abused) (Neglected) by
Respondent(s).

**AFFIRMATION IN SUPPORT OF
MOTION FOR
ORDER DIRECTING
SERVICES**

I,

hereby respectfully affirm under the penalty of perjury as follows:

1. I am an attorney licensed to practice in the courts of the State of New York, duly admitted on with offices at
2. I represent the Respondent who is the parent of the subject child(ren) who [(has)(have) been removed] [(is)(are) in danger of being removed from (his) (her) care and custody.
3. As such, I am fully familiar with the facts and circumstances of this case.
4. I make this Affirmation in support of the Respondent's motion for an order directing the presentment agency to provide the following services which are necessary (to protect the child(ren) and/or prevent a removal) (to ameliorate the conditions requiring the placement of the child(ren).
5. I make this Affirmation under the penalty of perjury upon information and belief, the sources of which are:
 - (a. My interview of the Respondent;)
 - (b. My interview of the said Relative(s);)
 - (c. My review of the petition and supporting documents herein;)
 - (d. My review of the present agency records herein;)
 - (e. My conversation with the (agency case worker) (attorney for the child);)
 - (f. Other information[specify]).
6. A petition under Article 10 of the Family Court Act has been filed with this Court on [specify date] alleging (abuse) (neglect) of the above-named child(ren).
7. An application has been made for the temporary removal of the child(ren) from home.)
8. It appears that certain services or assistance will (provide protection for the child(ren) and prevent the need for removal)(ameliorate the conditions making it necessary to remove the child(ren).
 - [a. (Supervised) (Unsupervised) (Overnight)(Weekend)Visitation for (___ Hours) (___ Days) per week under the following conditions (provide specifics: _____)];

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- [b. Assessments: (Psychological) (Substance Abuse)];
- [c. Housing];
- [d. Case Management];
- [e. Mental Health counseling/treatment (individual) (family)];
- [f. Substance Abuse Treatment];
- [g. Parenting Skills Training];
- [h. Parent Aid];
- [i. Parenting Coach];
- [j. Anger Management Classes];
- [k. Domestic Violence counseling or classes];
- [l. Transportation];
- [m. Medical insurance];
- [n. Income maintenance];
- [o. Other _____].

5. I make this Affirmation upon information and belief, the sources of which are:

- [1. My interview of the Respondent];
- [2. My interview of the said Relative(s)];
- [3. My review of the petition and supporting documents herein];
- [4. My review of the present agency records herein];
- [5. My conversation with the (agency case worker) (attorney for the child)];
- [6. Other information[specify _____]].

WHEREFORE, your Affirmant respectfully requests an order directing:

- 1. The immediate provision of the said services;
- 2. A hearing upon this application in the event that the agency opposes this request; and
- 3. Such other relief as the court finds just and proper.

Affirmed By

On / / .

;

PARENT RESOURCES FORM

PARENT RESOURCES

Client Name:
Page _____

FF#
Dates (from-to)

PARENTS					
Child	DOB	Mother	Mother's Address	Father	Father's Address

NOTES:

RELATIVES & OTHER FAMILY RESOURCES *				
Name	Relationship	DOB	Phone	Address

NOTES:

**NOTICE OF APPEAL
FROM AN INTERMEDIATE
ORDER**

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA**

In the Matter of

Family File No.
Docket No.

A Child(ren) Under the Age of 18

NOTICE OF APPEAL

Alleged to be (Abused) (Neglected) by

Respondent(s).

PLEASE TAKE NOTICE, that Respondent

hereby appeals to the Supreme Court, Appellate Division, Fourth Department, from an intermediate Order of the

County Family Court (Hon. _____, J.)

entered in the _____ County Family Court Clerk's Office on

:

- [1. Removing the subject child(ren) from the care and custody of the Respondent Pursuant to FCA Section 1022 or 1027];
- [2. Denying the Respondent's application for return of the children pursuant to FCA Section 1028];
- [3. Denying a relative placement with [specify name(s) of relative(s) _____];
- [4. Entering an Order of Protection providing [specify provisions _____];
- [5. Denying (supervised) (unsupervised) (overnight)(weekend) (extended) (visitation)] [provide specifics _____];
- [6. Denying the Respondent's request for an order directing the presentment agency to provide or arrange for:

- [a. Assessments: (Psychological) (Substance Abuse)];
- [b. Housing];
- [c. Case Management];
- [d. Mental Health counseling/treatment (individual) (family)];
- [e. Substance Abuse Treatment];
- [f. Parenting Skills Training];
- [g. Parent Aid];
- [h. Parenting Coach];
- [i. Anger Management Classes];
- [j. Domestic Violence counseling or classes];
- [k. Transportation];
- [l. Medical insurance];
- [m. Income maintenance];
- [n. Other _____];

- [7. Denying the Respondent's motion to terminate placement].

ATTORNEY FOR THE RESPONDENT
ADDRESS
TELEPHONE

DATED:

TO: CLERK OF THE COURT
ATTORNEY FOR PRESENTMENT AGENCY
AFC

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NYSBA - June 5, 2015

**NEW YORK STATE OFFICE OF
CHILDREN AND FAMILY
SERVICES**

SAFETY POCKET GUIDE

Safety Factors Pocket Guide



Determine whether each of the following eighteen safety factors is present for this family.

1. Based on your present assessment and review of prior history of abuse or maltreatment, the Parent(s)/Caretaker(s) is unable or unwilling to protect the child(ren).
2. Parent(s)/Caretaker(s) currently uses alcohol to the extent that it negatively impacts his/her ability to supervise, protect and/or care for the child(ren).
3. Parent(s)/Caretaker(s) currently uses illicit drugs or misuses prescription medication to the extent that it negatively impacts his/her ability to supervise, protect and/or care for the child(ren).
4. Child(ren) has experienced or is likely to experience physical or psychological harm as a result of domestic violence in the household.
5. Parent(s)/Caretaker(s)'s apparent or diagnosed medical or mental health status or developmental disability negatively impacts his/her ability to supervise, protect, and/or care for the child(ren).
6. Parent(s)/Caretaker(s) has a recent history of violence and/or is currently violent and out of control.
7. Parent(s)/Caretaker(s) is unable and/or unwilling to meet the child(ren)'s needs for food, clothing, shelter, medical or mental health care and/or control child's behavior.
8. Parent(s)/Caretaker(s) is unable and/or unwilling to provide adequate supervision of the child(ren).

→ Safety Factors 9 - 18 on reverse side →

9. Child(ren) has experienced serious and/or repeated physical harm or injury and/or the Parent(s)/Caretaker(s) has made a plausible threat of serious harm or injury to the child(ren).
10. Parent(s)/Caretaker(s) views, describes or acts toward the child(ren) in predominantly negative terms and/or has extremely unrealistic expectations of the child(ren).
11. Child(ren)'s current whereabouts cannot be ascertained and/or there is reason to believe the family is about to flee or refuses access to the child(ren).
12. Child(ren) has been or is suspected of being sexually abused or exploited and the Parent(s)/Caretaker(s) is unable or unwilling to provide adequate protection of the child(ren).
13. The physical condition of the home is hazardous to the safety of the child(ren).
14. Child(ren) expresses or exhibits fear of being in the home due to current behaviors of Parent(s)/Caretaker(s) or other persons living in, or frequenting the household.
15. Child(ren) has a positive toxicology for drugs and/or alcohol.
16. Child(ren) has significant vulnerability, is developmentally delayed, or medically fragile (e.g., on Apnea Monitor) and the Parent(s)/Caretaker(s) is unable and/or unwilling to provide adequate care and/or protection of the child(ren).
17. Weapon noted in CPS report or found in the home and Parent(s)/Caretaker(s) is unable and/or unwilling to protect the child(ren) from potential harm.
18. Criminal activity in the home negatively impacts Parent(s)/Caretaker(s) ability to supervise, protect and/or care for the child(ren).
19. No Safety Factors present at this time.



Do any of these factors alone or in combination place the child in immediate or impending danger or serious harm?

10/08

Risk Assessment

Profile

Pocket Guide

1. Total prior reports for adults and children in RAP family unit.
2. Any child in the RAP family unit was in the care or custody of any substitute caregivers (informally or formally) at any time prior to the current report date.
3. Child under one year old in RAP family unit at time of the current report, and/or new infant since report.
4. Current or recent history of housing with serious health or safety hazards; extreme overcrowding; unstable housing; or no housing.
5. Financial resources are mismanaged or limited to the degree that one or more basic family needs are intermittently or chronically unmet.
6. Caretaker has, and utilizes, reliable and constructive support and assistance from extended family, friends, or neighbors.
7. Caretaker has been a victim or perpetrator of abusive or threatening incidents with partners or other adults in family/neighborhood.
8. Caretaker's alcohol use has had negative effects on child care, family relationships, jobs, or arrests, within the past two years.
9. Caretaker's drug use has had negative effects on child care, family relationships, jobs, or arrests, within the past two years.

— Risk Elements continued on reverse side —>

10. Caretaker's behavior suggests a mental health problem exists and/or caretaker has a diagnosed mental illness.
11. Caretaker has very limited cognitive skills.
12. Caretaker has a debilitating physical illness or physical disability.
13. Caretaker demonstrates developmentally appropriate expectations of all children.
14. Caretaker attends to needs of all children and prioritizes the children's needs above his/her own needs or desires.
15. Caretaker understands the seriousness of current or potential harm to the children and is willing to address any areas of concern.

ELEVATED RISK ELEMENTS

- Death of a child as a result of abuse or maltreatment by caretaker(s)
- Caretaker(s) has a previous TPR
- Siblings removed from the home, prior to current report, due to abuse or neglect and remain with the substitute caregivers or foster parent
- Repeated incidents of sexual abuse or severe physical abuse by caretaker(s)
- Sexual abuse of a child and perpetrator is likely to have current access to child
- Physical injury to a child under one year old as a result of abuse or maltreatment by caretaker(s)
- Serious physical injury to a child requiring hospitalization/emergency care within the last 6 months, as a result of abuse or maltreatment by caretaker(s)
- Newborn child has a positive toxicology for alcohol or drugs

8/10