

## ***POLICIES RE: NONPARENTAL CUSTODY ACTION***

- a. ***Temporary Orders.*** Prior to the entry of any temporary orders the judicial officer is required to consult the judicial information system (JIS) or JABS to determine any information that may be pertinent to placement of a child. Also, by LSPR 94.04(k), the petitioner is required to submit a sworn declaration regarding their criminal, Child Protective Service (CPS) and social history of themselves and any adult living in their household before the entry of any temporary order. Finally, the judicial officer should sign an “Order Directing DCFS/CPS to Release Information...” and require the Petitioner to obtain “Authorization to Release Information to the Court” for the Petitioner and each adult living in the Petitioner’s home and file the “Authorization...” in the court file.
- b. ***Sunset on Temporary Orders/Assignment to judicial department.*** To avoid the possibility of temporary orders functionally becoming permanent orders without any further judicial scrutiny, all temporary orders will be made to expire on the date of the Status Conference as set forth in the scheduling order. All nonparental custody actions will be assigned to a judge and a status conference will be scheduled about 120 days after filing so the court can monitor whether or not the record searches have been completed and the case is moving forward to finalization.
- c. ***Final Orders.*** Before entering any final order, the judicial officer should review the information obtained as a result of the Order Directing DCFS/CPS to Release Information and Authorizations to Release Information and require the petitioner and any adult living in their household to provide the results of WSP and NCIC inquiries. As a practical matter, because at present there is no existing protocol for obtaining NCIC records, that requirement has been nullified until it is capable of being implemented. Therefore, prior to the entry of any final order, the court should have at its disposal a criminal and CPS history and any other concerns by the petitioner that have been self-reported in his or her sworn declaration.
- d. ***Process for obtaining and reviewing records.*** After the Court has entered an order that directs DCFS/CPS to provide CPS background information. Petitioner or Petitioner’s attorney shall deliver to the Family Law Coordinator (Coordinator) the original mandatory form “Coversheet for DCFS/CPS Background Check Information” (completed and signed by the attorney or party). This alerts the Coordinator that the “Order Directing DCFS/CPS to Release Information...” and the “Authorization to Release Information to the Court” have been signed and filed. The Coordinator will then forward copies to DCFS/CPS. The Coordinator also maintains a copy of the initial JIS search in the parties’ file. Upon receipt of the CPS information from DCFS/CPS, the file is referred to a court commissioner assigned to review such matters. A

determination is then made as to what response is necessary and either an order is entered which allows the case to proceed or an order is entered which requires the petitioner to appear and show cause. It is contemplated that the parties or their attorneys will be provided copies of the records themselves shortly after their receipt and the Coordinator will thereafter contact to let them know whether any further inquiry is necessary.

- e. ***Judicial Protocol for Concerns raised by records.*** In the event that concerns or “red flags” are raised by the criminal and CPS information, the response to those concerns will vary with regard to the severity of the nature of those concerns. For example, for minor concerns, the court may simply require a more detailed explanation of those concerns from the Petitioner(s). If there are somewhat greater concerns, the Petitioner(s) may be summoned before the court to show cause why their placement should not be referred to Child Protective Services (CPS) for investigation. Finally, in cases where the records disclose the child may be facing imminent and significant risks, the court may make an immediate referral to CPS.
- f. ***Compliance with ICWA.*** Another recent change to RCW 26.10 was to make such actions compliant with the Indian Child Welfare Act (ICWA), 25 U.S.C. Sec. 1903. The Petitioner now must provide in the petition an allegation as to whether or not the child is subject to ICWA and if the child is, they are now required to fulfill all notice and evidentiary requirements of the act. This, in turn, was a response to the Mahaney case, 146 Wn.2d. 878 (2002) that held first of all that ICWA applied to nonparental custody actions and that in at least contested cases, if the action involves an Indian child as defined by ICWA, it may have to be referred to Juvenile Court. DSHS may then be required to provide services to the parents and the child. Our local policy will be that in contested cases the matter will be referred to Juvenile Court, with notice being given to DSHS of such action.
- g. ***Vacation/Dismissal or Modification of Final Custody Orders.*** In the event that the parties to a Nonparental Custody Decree reach an agreement to either vacate or dismiss such Decree and return the children subject to the Decree to the home of one or both of the parents, those parents will be required to provide both criminal histories and CPS records of themselves and any adult residing in their household. In the event the judicial officer has concerns about the placement the matter may be referred to CPS to do an investigation. In the event the petitioners and respondents are unable to agree about placement when the parents are seeking custody, the parties will be required to file a modification.