

SCLJuCR 2.3 RIGHT TO AND NOTICE OF SHELTER CARE HEARING

(a) Notice of Right to Shelter Care Hearing

(1) *Scheduling and Notice.* All shelter care hearings shall be set on the designated shelter care dockets absent prior court approval for emergent situations only. A shelter care hearing may be set by court order or by filing a notice of hearing with the Clerk.

Commented [ER1]: This language is ambiguous and it could be argued that every shelter care hearing is emergent.

(i) Notified Entities. The party scheduling the hearing shall notify Court Administration, Clerk of Court, Attorney General's Office, Guardian ad Litem program, ~~Public Defender's Office Juvenile Division~~, Office of Assigned Counsel, Skagit County Family & Juvenile Court Improvement Project Coordinator, and all other parties, including parents or any attorneys assigned prior to scheduling. At the time of filing, the party scheduling the hearing shall provide each of the above entities and parties with a copy of the petition, summons, motion, notice of hearing, and any orders of provisional appointment of attorney.

Commented [ER2]: This proposed rule does not provide any deadlines by which the notice must be filed. This is problematic because it will likely result in continued inadequate time for parents and defense counsel to prepare. We propose adding "the party scheduling the hearing must file the notice of hearing by 12:00 PM one day prior to the hearing."

(ii) Cause Number. All requests shall be brought to the Clerk's Office to receive a cause number prior to presentment to a judicial officer.

Commented [ER3]: Notice should also be sent to the parents' attorneys on local contract with the Office of Public Defense, as it was previously sent to the Public Defender's Office and is sent to all the other court stakeholders. This should be as explicit as the requirement to send notice to the GAL program and FJCIP, neither of which are necessary parties to a dependency petition.

(iii) Motions for Pickup Orders. If a pickup order is requested, the requesting party shall present the filing to the judicial officer during any ex parte calendar. If the filing occurs before the ex parte calendar has begun or after conclusion of the ex parte calendar, the AAG or case worker shall provide the filing to Superior Court Administration for judicial review after obtaining a cause number as set forth above. Requests for a pickup order shall be presented no later than 3:00 p.m. for same-day judicial review.

Commented [ER4]: This proposed rule does not provide any deadlines by which the notice must be filed. This is problematic because it will likely result in continued inadequate time for parents and defense counsel to prepare. We propose adding "... no later than by 12:00 PM the day prior to the hearing."

(2) *Provisional Appointment of Attorney.* The Court shall afford a provisional attorney to each parent and any child age 12 (twelve) and over ~~a provisional attorney~~ to represent them at the shelter care hearing. The parents' attorneys on local contract with the Office of Public Defense shall maintain ~~continue to coordinate~~ a list and process with the Attorney General's Office of covering attorneys for purposes of designated a provisional attorney at the first shelter care hearing.

Commented [ER5]: This proposal does not provide a procedure for notice and a hearing on the motion for a pickup-order as required by RCW 13.34.050(2). We propose the following:

Upon the filing of a motion to take a child into custody filed with a notice of hearing, the court shall schedule a hearing on such motion within forty-eight (48) hours. The petitioner shall provide the parents, parent's counsel, including provisionally assigned counsel, and the parents' attorneys on local contract with the Office of Public Defense, at least twenty-four (24) hours' notice of the hearing on the motion to take the child in to custody.

(i) List of Provisional Counsel. The attorney for the Department shall notify Office of Assigned Counsel of the need for a provisional attorney for any named child age 12 and older. Upon filing the petition and note for shelter care hearing, the Attorney General's Office shall also present an order of provisional appointment of attorney which proposes to appoint the next attorney(s) listed. No deviations from the list shall occur without prior notice and agreement by the proposed parent's counsel. Copies of provisional appointment orders and other documents listed above in (1) shall be left with Superior Court Administration ~~the Court Administrator, which who~~ will provide those nonconformed copies to the provisionally appointed attorneys.

Commented [ER6]: This does not account for situations where the attorney may already represent the parents in another matter or previously represented them. While parents counsel wants to ensure continuity of representation and avoid assigning provisional counsel that has conflicts, they also need to ensure that they are available for provisional assignment on a hearing date for which they are not regularly scheduled. We propose adding "The petitioner will not request appointment of a specific defense attorney without first contacting the defense attorney and confirming availability."

(ii) Pre-Hearing Consultation. The provisional attorney shall appear at the same time the parents have been informed the hearing will begin. At the time calendared, the cCourt will permit a 30-minute period for the attorneys and parents to communicate prior to the hearing, if said communications have not already taken place. Additional time may be afforded based on judicial discretion.

(3) *Appointment of Guardian ad Litem.* The cCourt shall appoint a Guardian ad Litem for the child at the initial shelter care hearing unless good cause exists to not appoint one. All appointments shall follow the Skagit County Superior Court Title 13 Guardian Appointment Procedures. This decision may be reviewed at each subsequent hearing including the dependency fact-finding hearing, each dependency review hearing, and prior to the entry of a guardianship or termination order. A party may request that a Guardian ad Litem be appointed at any time during the dependency, guardianship, or termination proceedings.

(4) *Discovery.* The Department shall electronically provide all discovery supporting the dependency petition filing to all appointed and provisionally appointed attorneys and the Guardian ad Litem program at the time the petition is filed and a shelter care hearing is scheduled. prior to the scheduled shelter care hearing. When a parent appears without provisionally appointed counsel, such discovery shall be provided directly to the parent at the shelter care hearing absent direct contact with the Attorney General's Office.

Commented [ER7]: This is insufficient for the parents to adequately prepare and review copies of the Departments records as required by RCW 13.34.065 and 13.34.090(5). Including a maximum time allotted to the parents and counsel creates a presumption that it is sufficient, when it is not.

Commented [ER8]: It would be impermissible for the court to inquire about the contents of the communication that has taken place and the attorney would be unable to comply with this provision without prior consent of their client pursuant to RPC 1.6.

Commented [ER9]: This necessarily excludes exculpatory evidence and violates the requirement that the copies of DCYF records be provided to the child, parents and their attorneys "prior to any shelter care hearing." RCW 13.34.090(5)

Commented [ER10]: The statute requires all records to be provided prior to the shelter care hearing, not at it. Therefore DCYF still needs to provide discovery in advance of the hearing to an unrepresented parent.