

# **DOUBLE JEOPARDY: THE INHERENT DANGERS OF THE DUAL CPS AND CRIMINAL CASE**

By: Julie Ketterman

# SITUATION

Mother catches a CPS case because she is being charged with a possession of a controlled substance. The children are taken away after being given a random drug screening by CPS.

What kind of lawyer do they hire?

- Civil?
- Criminal?
- Family?

How does a lawyer prevent the parent from losing one case while trying to win the other?

# CPS CASES

- Adversarial Hearing
  - CPS must provide sufficient evidence to convince a person of “ordinary prudence and caution” that there is continuing danger to the child.
  - If CPS has met this burden the court will grant temporary managing conservatorship to the department.
- Status Hearing
  - The parents are provided a Family Plan of Service (FPOS) that may include services such as parenting classes, sex offender classes, random drug tests, drug assessment and anger management
  - CPS can ask the parents to complete a variety of services that sometimes includes a polygraph.
  - CPS will require parents to sign a HIPAA release which gives access to all medical and psychiatric records while they are completing services.
  - At this hearing an Ad Litem for the parent and Child Advocates (CASA) may be appointed.

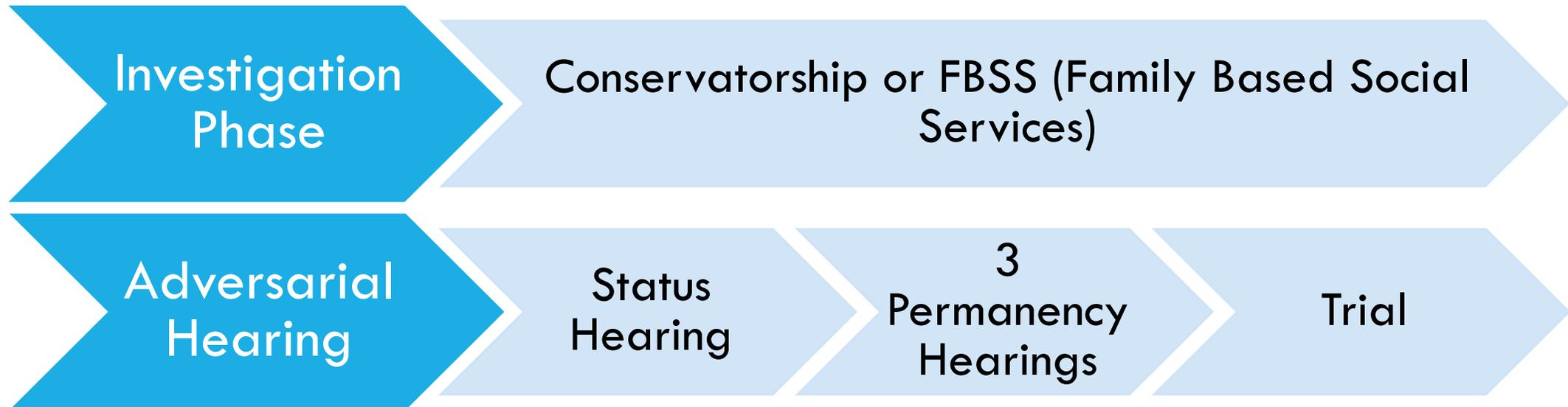
# PROBABLE CAUSE

During this time CPS does not have to prove probable cause. Probable cause is a criminal term. The district attorney/police, however, only needs probable cause to arrest or indict.

Anything that the parent states to anyone involved in a CPS case is considered a “noncustodial statement” and can –and mostly likely will– be used against them in the criminal case.

The evidence and statements used during the CPS case have potential to ruin the criminal defense.

# CPS HEARINGS



# CPS HEARINGS CONT'D.

5 Statutory Hearings, with potential for more for “special status” hearings, as well as final trial.

Each parent is put under oath at ALL hearings

Any sworn statements, medical, mental or other required evaluations will most likely be shared with the district attorney.

Caseworkers and providers of services to the parent can be called as witnesses.

CPS hearing and investigations lend possible evidence to the criminal case.

# ADMISSION OF GUILT BY CLIENT

CPS will often tell a parent that if they admit what they “did” to a therapist or take responsibility for their actions, they will then be able to work towards family reunification.

Parents who refuse will be dismissed by therapist as “unsuccessfully discharged” from therapy.

Example: Sexual abuse of a child

# TRAP AND MANIPULATION

Reunifications rarely happen in CPS cases that have a parallel criminal case.

Individuals without attorneys may trust CPS and do what is asked of them, thus, dooming their criminal case in the process.

# CRIMINAL PLEA DEALS

Offering a plea deal to a client will often have unintended consequences on the CPS case.

Example: A two-year-plus conviction will result in an automatic termination of parental rights.

# THE SOLUTION

Hiring separate attorneys for each case that are well versed and experienced in their respective fields.

The client must insist that both attorneys communicate about both cases.

This is hard because sometimes court appointed CPS and criminal attorneys will not communicate.

Courts will not appoint an attorney to a parent if termination of parental rights is not sought.

Problematic because some clients will believe that the “truth” will set them free.

Any criminal attorney with an adjoining CPS case should attend CPS hearings to ensure parents do not incriminate themselves.



# COPIES OF PRESENTATION

Email Danielle at  
[Danielle@KHALawyers.com](mailto:Danielle@KHALawyers.com)