

ADR: Facilitated TPR Settlement Conferences

2009 Nebraska Children's Summit: Action to Impact
Thursday, September 10, 2009

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Goals of TPR facilitation

- ▶ To provide an **opportunity** for the bio-parents, foster-adoptive parents, guardian ad litem, child welfare staff, lawyers, and others **to address the unique issues involved when termination of parental rights is being recommended** for the best interests and permanency of a child.
- ▶ To **facilitate a dialogue** between the parents, adoptive resources, and others to **open doors to understanding, reduce confusion and uncertainty** regarding this critical matter



Goals of TPR facilitation

- ▶ To **explore permanency options**
 - Voluntary relinquishment
 - Potential guardianship
 - Termination litigation
 - Further work toward reunification
 - Other
- ▶ To allow the participants to **develop a cooperative plan** for the child's future.



Termination of Parental Rights

- ▶ Core civil liberty of a parent
- ▶ Critical nature of legal proceeding
- ▶ Best interests of the child
- ▶ Permanency, safety, well-being for the child
- ▶ Societal mores and values as reflected by federal and state law
- ▶ Consideration of state statutory framework for post-adoption contact



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TPR facilitation nationally

- ▶ Several states, including CA, NY, AZ, IL, OH
- ▶ Child Welfare Collaborative Practices Network
- ▶ National Council of Juvenile and Family Court Judges – highlight mediation and facilitation in child welfare cases



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What has been Nebraska's experience with TPR facilitation?

- ▶ Judicial referral
- ▶ Case-by-case analysis
- ▶ ODR-approved mediation center resource
- ▶ Trained, experienced child welfare facilitators
- ▶ Historical partnership with HHS – contract for funding
- ▶ Status of open adoption in Nebraska
- ▶ Case studies

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How does one use interest-based process within a rights-based system?

- ▶ Legal rights and fundamental civil liberties
- ▶ Due process
- ▶ Best interests of the child
- ▶ Judicial authority
- ▶ Proficient, experienced interest-based facilitator
- ▶ Preparation
- ▶ Active participation of key stakeholders
- ▶ Protocols

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What are some of the essential aspects of TPR facilitation?



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Timing and referral issues

- ▶ When should a case be referred to facilitated TPR conference?
- ▶ Aspects of case progression?
- ▶ Who is the referral source?
- ▶ What kind and amount of preparation is necessary?
- ▶ Who should facilitate? Who shouldn't facilitate?
- ▶ What happens with verbal or written agreements?
- ▶ Other?

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What is the role of the mediation center and facilitator?

- ▶ Referral acceptance
- ▶ Case management
 - Determination of issues
 - Identify essential stakeholders (parties)
 - Design process approach
 - Location of session
 - Timing within judicial system & scheduling
- ▶ Preparation of parties
- ▶ Day-of-session facilitation
- ▶ Follow up

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What are some possible configurations for facilitated TPR conferences?

- ▶ Participants
 - All stakeholders
 - Bio-parent(s) and fos-adopt parents only, with attorneys invited (may participate by phone only)
 - Bio-parent(s) and child welfare case managers
- ▶ Specific topics
 - Relational issues
 - Future contact questions
 - Child's needs
 - Permanency options (future contact with child?)
 - Evidence

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What are some possible configurations for facilitated TPR conferences?

- ▶ Timing of session(s)
 - Consideration of case status
 - Provide time after conference for parental decision-making
- ▶ Location of session(s)

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Who should be at the table?

(for all or part of the process?)

- ▶ Bio parent(s)
- ▶ Parent's attorney
- ▶ Guardian ad litem
- ▶ Fos-adopt parent /or/ foster parent
- ▶ Child welfare case manager (Supervisor?)
- ▶ Counselor/ therapist (?)
- ▶ County attorney (?)
- ▶ Others ?

Proficient, experienced mediator/facilitator

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What issues or topics will be addressed?

- ▶ Key question:

Considering the best interests of the child, and the status of the child welfare proceeding, how should we proceed regarding the child's permanency?

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What issues or topics might be addressed?

- ▶ If voluntary relinquishment were to occur, what do we know regarding:
 - Evidence
 - Child
 - Child's best interests
 - Options for permanency
 - Adoption
 - Guardianship
 - Post adoption contact

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What issues or topics might be addressed?

- ▶ If voluntary relinquishment does not occur, what might be the next steps in the child welfare case?
 - Evidence
 - Child
 - Child's best interests
 - Court process
 - Post termination contact between bio-parent and child
 - Other

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Other legal issues

- ▶ What other legal issues might need to be addressed or counseled for this interest-based approach?
- ▶ What should be the timing of a post-adoption contact agreement vis-à-vis a the signing of a relinquishment?

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Other permanency issues

- ▶ Who is the adoptive family? How to facilitate a good transition?
- ▶ What are specific needs of the child? Educational? Medical? Emotional?
- ▶ Sibling issues?
- ▶ Extended family network?

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How is confidentiality and privilege addressed?

- ▶ Similar to court-based settlement conference
- ▶ NE Dispute Resolution Act (if facilitated by ODR-affiliated center mediator): N.R.S. § 25-2914 (1991)
- ▶ Signed agreement to mediate / participate in facilitated TPR conference
- ▶ NE Uniform Mediation Act: N.R.S. § 25-2930, et seq. (2003) (exceptions)
- ▶ N.R.S. § 43-247.01: Facilitated conferencing; confidential; privileged communications

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“The power is in the dialogue between the foster-adopt parents and the birth parents, . . . not what is on paper.”



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TPR Case Studies



Thank you!

- ▶ For more information, please contact an ODR-approved mediation center or Debora Brownyard at debora.brownyard@nebraska.gov, www.supremecourt.ne.gov/mediation

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