



“The court’s role in TPR cases is to give the **most careful consideration to the relevant statutory factors**, to make **specific findings based on the evidence with respect to each of them**, and, mindful of the presumption favoring a continuation of the parental relationship, **determine expressly whether those findings suffice either to show an unfitness on the part of the parent to remain in a parental relationship with the child or to constitute an exceptional circumstance that would make a continuation of the parental relationship detrimental to the best interest of the child, and, if so, how.** If the court does that – **articulates its conclusion as to the best interest of the child** in that manner – the parental rights we have recognized and the statutory basis for terminating those rights are in proper and harmonious balance.”

*In re Rashawn H.*, 402 Md 477 at 501 (2007)

Termination of Parental Rights

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# Nuts and Bolts



# Today's Fast Journey

- Applicable Laws
- Relationship between CINA and TPR
- Procedural Requirements
- Trial of the Petition
- Trial Aftermath
- Related Issues
- Questioning Throughout
- Tools on Flash Drive



# Maryland

- **Courts & Judicial Proceedings Article (“CJP”)**
  - Title 3, Subtitle 8
- **Family Law Article (“FL”)**
  - Title 5, Subtitle 3
- **Maryland Rules**
  - Title 9, Chapter 100 and Title 11
- **Court of Appeals and Court of Special Appeals Opinions**



# CINA groundwork

- Whether child in need of assistance
- Whether ICWA implicated
- Services to permit safe “reunification”
- Reasonableness of efforts of Department
- Progress of parent(s) and efforts of Department
- Plan becomes Adoption



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# CINA AND TPR PROCEEDINGS ARE DISTINCT





Judge Adkins: “Two **intricately connected, yet separate legal mechanisms**, come into play in this case. CINA proceedings are governed by sections 3–801 through 3–830 of the Courts and Judicial Proceedings Article ..., and TPR proceedings are governed by sections 5–313 through 5–328 of the Family Law Article ...”

*In re Jayden G.*, 433 Md. 50, 54 (2013).

“CINA proceedings are designed ‘[t]o provide for the care, protection, safety, and mental and physical development of’ children found CINA; ‘conserve and strengthen the child’s family ties;’ ensure that parents and local departments work together to ‘remed[y] the circumstances that required the court’s intervention;’ and ‘achieve a timely, permanent placement for the child consistent with the child’s best interests.’ CJP § 3–802(a).” 433 Md. at 75





“In contrast, when the Department initiates TPR proceedings, it ‘seek[s] to terminate the existing parental relationship.’ *Rashawn H.* 420 Md. at 496...It files the TPR petition when it believes a child’s welfare will be best served in the care and custody of others, rather than the natural parents.” 433 Md. at 75





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“...in these two types of proceedings, courts consider **different factors**.” 433 Md. at 75

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“TPR proceedings require a ‘clear and convincing’ **standard of proof**, but CINA adjudications are made based on the lesser ‘preponderance of the evidence’ standard.” 433 Md. at 77

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“Furthermore, in a permanency plan review hearing, strict **application of the Maryland Rules of Evidence** is not required....It is, however, required in a TPR proceeding.” 433 Md. at 77



**IN ORDER TO BE FREE FOR ADOPTION**

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the legal relationship between a child and the child's parents or parent must be terminated

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cannot terminate rights of one parent and not the other

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remember that the modern family can look different



# CINA to Adoption

Bypass Guardianship

Adoption can occur  
without prior TPR  
proceeding





# FL Title 5 Part III

Allows one to go directly from CINA to adoption but **requires adoption petition**

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15, 2018

C.A.N.D.O. October

# FL

## Section 5 - 331

- Consent of Department required to file petition
- Allowed where no contact with Department within 180 days of filing or Department unable to locate after reasonable efforts to locate
- **Not** sooner than the later of 30 days after birth of child, the expiration of any period for revocation of consent or time to file an objection. F.L. 5 – 336





## Once you decide permanency plan is changed to adoption

- **CJP 3-823(g)**
- Order Department to file guardianship petition within 30 days
- If Department does not support the plan, order it to file petition within 60 days
- Schedule the next 6-month hearing to be the trial of the guardianship petition **but**



# Department required to file if

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- the child has been in an **out-of-home placement for 15 of the most recent 22 months**;
- a court finds that the child is an **abandoned infant**; or
- A **parent** has been **convicted of any of certain crimes of violence related acts** involving child, parent or sibling of the child
- 



# Department not required to file if



- child is in **kinship care**;
- local department has documented in the case plan ... a **compelling reason** termination of parental rights would not be in the child's best interests; or
- local department has **not provided services to the family consistent with the time period** in the local department's case plan that department considers **necessary for the safe return of the child to the child's home**.



# Petition for guardianship and TPR proceedings

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180 days from  
filing to judgment

and

within 45 days  
after consents or trial

FL 5 – 319(a)



Remember,  
“You are not alone.”



- Petition may be filed by the Department or by the child
- Rules include forms for Show Cause Order, Objections, Consents and Attorney Affidavits
- Model Orders through Foster Care Court Improvement Program
- Allow attorneys to submit proposed findings and conclusions
- Consult colleagues
- MDROCC



# Other Legal Minds

- **Each child** has a statutory right to counsel (DHR Legal Services Program)
- Each Indigent parent has a statutory right to counsel provided through the Office of the Public Defender
- Various bases for appointment of conflict counsel







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## **Notice by show cause order**

- each parent
- last attorney of record for child
- last attorney of record for each parent

**FL 5 – 316**

- Failure to give notice to last attorney of record in CINA proceeding is **fatal**, even if the attorney's appearance was stricken. *In re Adoption/ Guardianship No. 6Z000045*, 372 Md. 104 (2002).
- Service on the office of the prior attorney who no longer is at the office is **ineffective**. *In re: Adoption/ Guardianship of Genara A.*, 152 Md. App. 725 (2003)





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- If local department is unable to identify an address for parent and serve at address **after reasonable good faith efforts** (FL 5- 316 (e)) to do so
  - **FL 5- 316 (f)** specifies publication by newspaper **and** via website

# Rule 9-103 (b)(1)(K)

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Petition for guardianship or adoption is to include

“Facts known to ... petitioner that may indicate that a party has a **disability that makes the party incapable of consenting or participating effectively in the proceedings**, or, if no such facts are known to the petitioner, a statement to that effect”





# Disability of Parent

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Disability hearing required - Rule 9-105(b)

If disability finding, parent is entitled to representation by Office of Public Defender FL 5 – 307(a)



# Objection triggers parent's right to counsel

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Office of Public Defender

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**If** there is **no dispute as to disability** and parent is still represented by the Office of the Public Defender in the CINA proceeding (eligibility, continued desire to be so represented and no basis for disruption of the relationship) the Office will enter its appearance and file an objection on behalf of its client. A Consent Notice or similar filing by local department would be expected.

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Attorney cannot object on behalf of client who has not authorized the filing. *In re Darjal*, 191 Md. App. 505 (2010)

## FL 5-318, 320-322

- may be actual or deemed
- actual consent may be conditional

Guardianship  
may  
become  
consensual

# FL 5-320 (b)

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A governmental unit or person:

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(1) may condition consent or acquiescence on **adoption into a specific family that a local department approves for the placement**; but (2) may not condition consent or acquiescence on any factor other than placement into a specific family.

A photograph of a smiling Black man in a light-colored sweater shaking hands with another person whose profile is visible on the left. The background is blurred, showing an indoor setting with warm lighting.

# Voluntary CONSENTS

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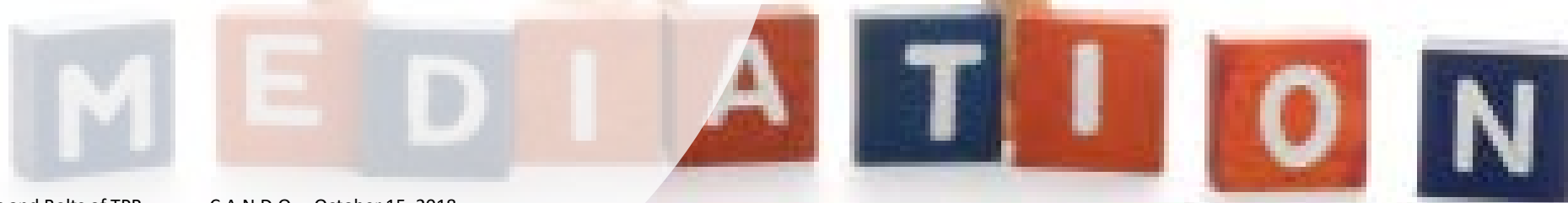


3

May be  
in writing or orally received

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- **Written** - Form 9 – 102.1 with an attorney's affidavit if represented by counsel
- **Oral** – Follow FL 5-321

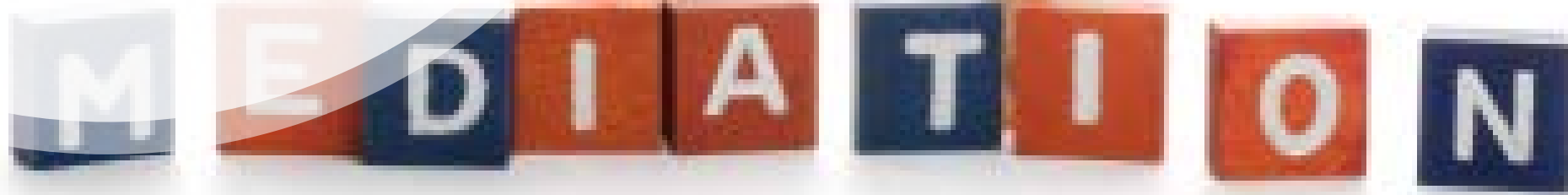


# the oral consent

- Consent must be entered on the record before the judge in the language of the parent
- Must include **waiver of revocation**
- Must be knowingly and voluntarily given
- Oral examination is recommended, especially if not represented by counsel

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# STATUTORY CONSENTS

Despite proper notice, a child or parent has **failed to file a timely objection**





## **no revocation of parent's deemed consent**

“As a matter of statutory construction ... we conclude that **there is no right to revoke a statutory consent** .... That is a consent, as we have said, arising by operation of law, not by volition, and it is not within the power of the parent to revoke it.”

*In re: Adoption/Guardianship No. 93321055/CAD 344 Md. 458, 486 (1997); also, see, In re: Adoption of Sean M. 430 Md. 695 (2013) (Independent Adoption)*





# Request of child to revoke consent

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- “We recognize that there **may be extreme circumstances that justify providing the child in a TPR case with an opportunity to revoke a statutory consent.**” *In re Adoption/Guardianship No. T0002005, 141 Md. App. 570, 602 (2001)*
- However, there it was held that **maturational of a child is not extreme circumstance** that would cause it to be an abuse of discretion for a judge to refuse request of child to revoke consent.

# perfunctory grant with child's deemed consent?

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- “To the extent that the court below failed to permit John to withdraw his deemed consent, we conclude that the court neither erred nor abused its discretion. We hasten to add, however, that our conclusion does not alter the paramount principle in cases of this kind; **even if the child is deemed to have consented, and cannot withdraw that consent, the court may not grant a TPR petition unless it is satisfied, by clear and convincing evidence, that such a ruling is in the child's best interest.**”
- *In re Adoption/Guardianship No. T0002005*, 141 Md. App. 570, 603







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**if the department decides to dismiss petition but child objects**

“The primary issue we must decide in each case is whether the **trial court violated the constitutional and/or statutory rights of the children by granting the petition** of BCDSS to terminate parental rights when both parents either affirmatively consented or were statutorily deemed to have consented, **without first providing the children with a meaningful opportunity to be heard on the merits of the petition.** We shall hold these children had this right, and accordingly, we shall reverse.”

*In re Adoption/Guardianship No T97036005, 358 Md. 12 (2002)*

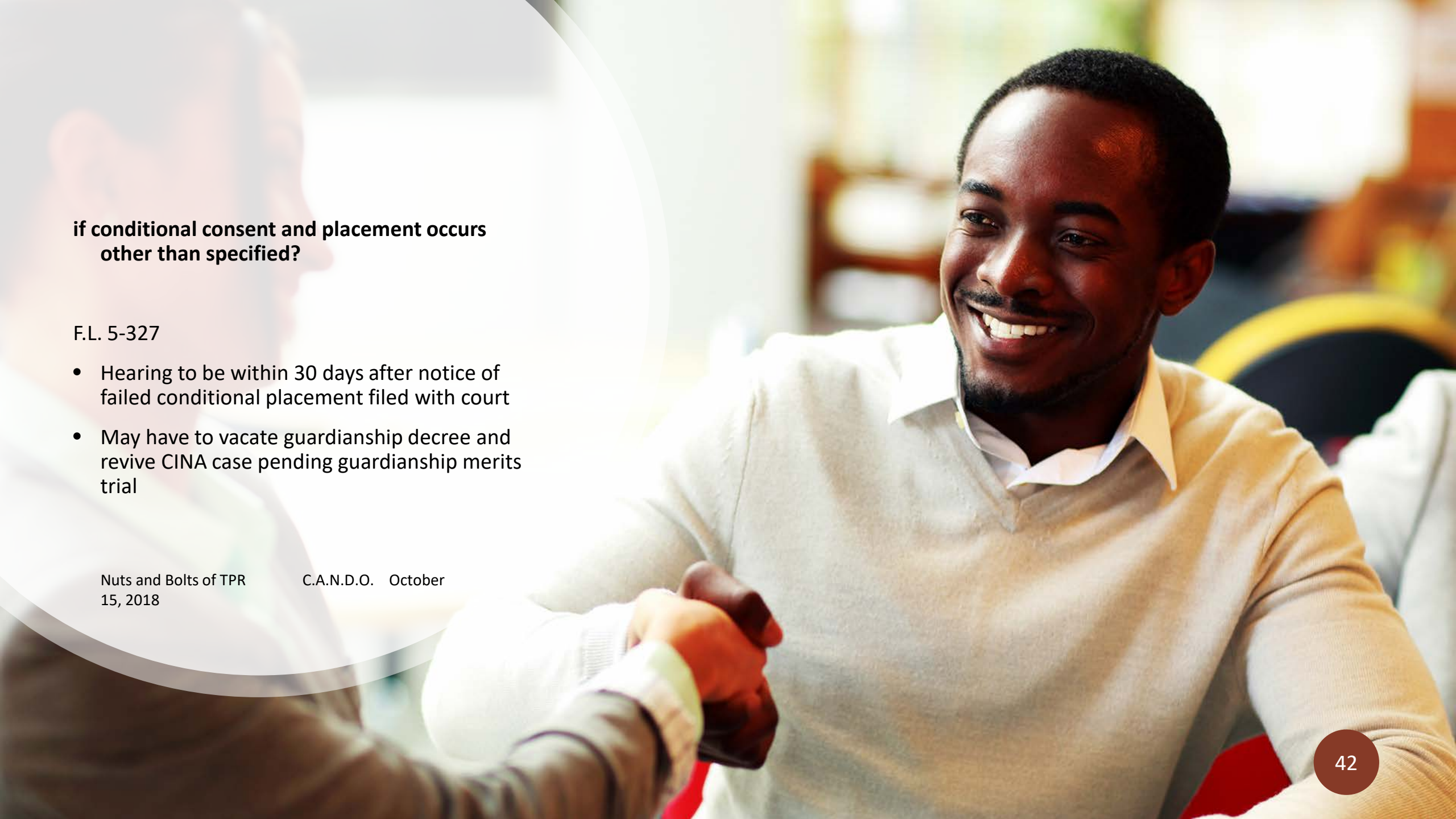


# With Consensual Grant

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- **FL 5-322** – Issue order granting petition
- **FL 5-324** – Issue separate order addressing termination of CINA case, reasonable efforts findings and notice, among other things



A photograph of a smiling Black man in a white sweater shaking hands with another person whose arm is visible on the left. The background is a blurred indoor setting.

**if conditional consent and placement occurs  
other than specified?**

F.L. 5-327

- Hearing to be within 30 days after notice of failed conditional placement filed with court
- May have to vacate guardianship decree and revive CINA case pending guardianship merits trial

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if parent seeks to revoke consent because **post-adoption contact agreement breached?**

“...not a ground for revoking consent to, or setting aside an order for, an adoption or guardianship.” **F.L. Article, 5-308 (d)**

Court can order mediation; enforce or modify

**No caselaw**



# effect of appeal of permanency plan?





*In re Adoption/Guardianship of Jayden G.*,  
433 Md. 50, 69 (2013)

“The parent does have the right to appeal a permanency plan of adoption, but that right is not absolute. By the same token, the 180-day provision is not to be used as a sword against all motions to stay. **The paramount concern here is the child’s best interests. Neither automatic stays nor routine denials of motions account for that. Only the exercise of sound discretion does.**”

# trial time

FL 5-323



# Managing the Trial

- Strict Application of Rules of Evidence
- Judicial Notice of CINA Findings and Orders
- Stipulations
- Be receptive to experienced counsel pointing to something missed as to a required finding
- Proposed Findings and Conclusions



# The Parties

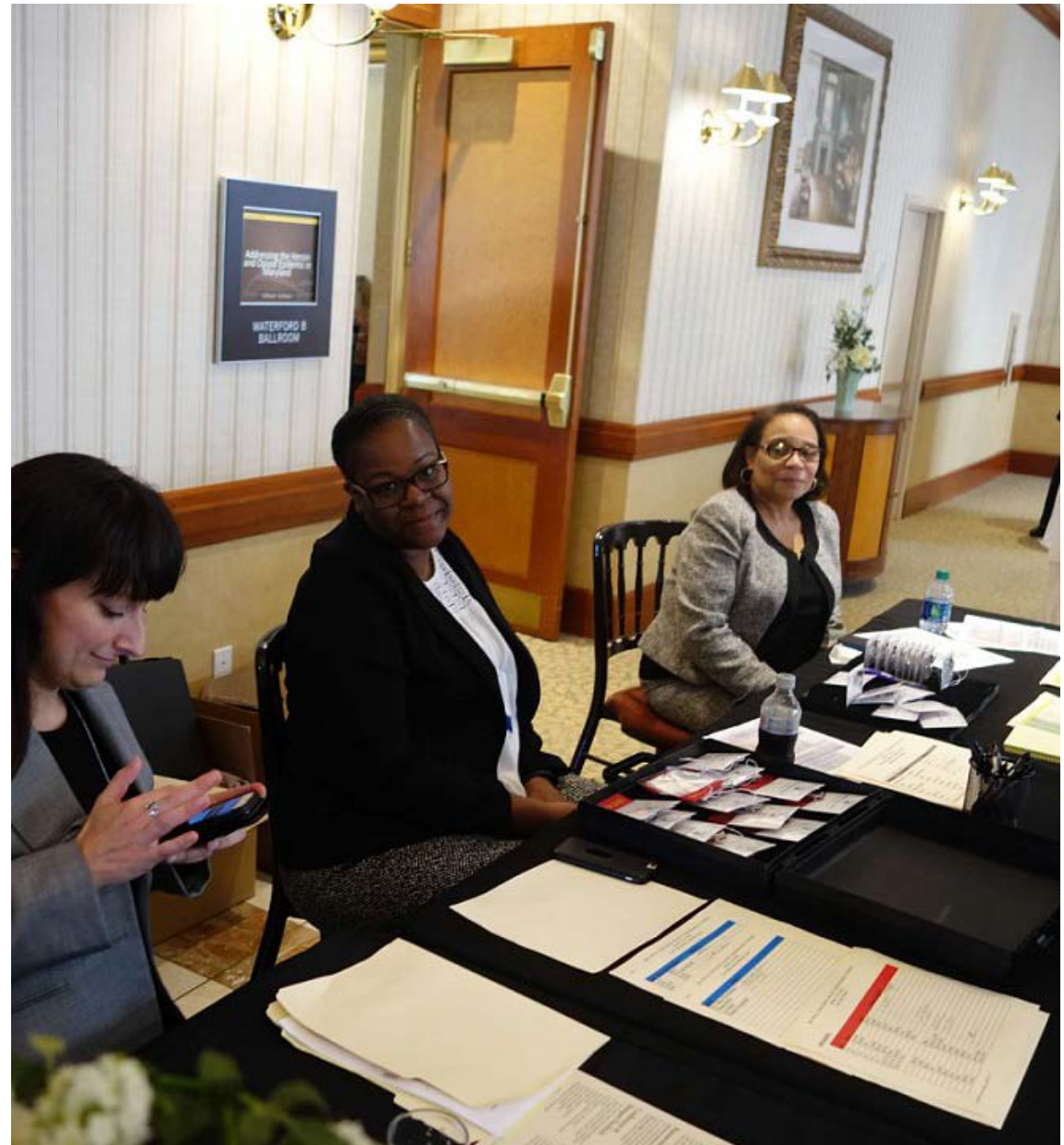
- Make certain to identify the parties and their representatives
- As to any absent party, confirm proof of service of show cause order (parent and prior counsel) and notice of trial
- **Make certain that self-represented is not in that status by fault of “the Court”**
- **The Court is charged with knowing what the Clerk of the Court knows**





remember  
to  
embrace the  
model order!!!

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### FL 5–323.

(b) If, after consideration of factors as required in this section, a juvenile court finds by **clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the rights of the parent is in a child’s best interests**, the juvenile court may grant guardianship of the child without consent otherwise required under this subtitle and over the child’s objection.

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You must make a finding as to **each factor** in **FL 5-323**

*In re Victor A.*, 386 Md. 288, 319 (2005)

Findings must be made **as to each parent**.

*In re Adoption/Guardianship of C.E.*, No. 77,  
September Term 2017, CA (August 13, 2018)

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The **clear and convincing evidence** requirement  
applies to the **weighing of all the 5-323 factors as a  
whole**, not as to each factor individually.

*In re Adoption/ Guardianship No. 94339058/CAD*, 120  
*Md.App.* 88, 105 (1998)

# Ruling on The Merits



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The Best Interest of the Child prevails

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**Before answering the exceptional circumstance or unfitness question**, you must have considered all of the other statutory factors

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Decision must be **individual as to each child**.

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Fact that other children are in parent's custody does not preclude finding of exceptional circumstances.

*In Re Ta'Niya*, 417 Md. 90  
(2010)





# Unfitness OR Exceptional Circumstances

On appeal, though the trial court found parent unfit, parent challenged termination of rights where the trial court did not also find exceptional circumstances.

The trial court's decision was affirmed.

*In re Adoption of Jasmine D.*, 217 Md. App. 718 (2014)



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**Lack of adoptive resource** is improper basis for denial. *In re Victor A.*

Child's has **special developmental needs** does not allow different treatment. *In re Victor A.*

Long-term, as opposed to short-term, **imprisonment**, may be given significant weight. *In re No. J970013*, 128 Md. App. 242 (1999)



Time in foster care alone is not sufficient.

*In re Alonza D., Jr.*, 412 Md. 442 (2010)

But, where most meaningful relationship and only stability has been with foster family, time in foster care, exceptional circumstances may be found.

*In re Cadence B.*, 417 Md. 146 (2010)

“Despite Father's claims that he planned to legally come back to the United States following his deportation, he recognized that his reentry may never happen. Therefore, not only was he unable to take care of the Children immediately, or even in the immediate future, there exists the very real possibility that he may never be able to enter the United States legally. This distinct possibility is made even more probable in light of the fact that Father made no known efforts at securing legal entry in the years between the Children's birth and his incarceration in 2013.”

*In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 56 (2017)

# Must be ar-tic-u-lat-ed

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*In re Adoption/Guardianship of Rashawn H.*  
402 Md. 477







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*In Re: Amber R.*, 417 Md. 701 (2011):

Great on issue of finding of “unfitness” and the sufficiency of the statutory factors

*In Re: Adoption/Guardianship of L.B.*, 229 Md. App. 566 (2016)

Great on importance of articulation of findings on factors where articulation of how the weighing establishes exceptional circumstances or unfitness is challenged as not sufficient

**Any case that concerns grant is a good guide.**

180 days  
have come  
and you have  
not issued a  
ruling on the  
petition



## Dismissal inappropriate

“ We disagree that the 180-day ruling time ... is in the nature of a statute of limitations or a trial deadline, such as those addressed in *James S. and Hicks...*”

*In re: Abigail C.* 138 Md. App. 570, 584 (2001)



## Reasonable efforts finding required

- A separate order accompanying the order granting or denying the petition must include **“a specific finding on whether reasonable efforts have been made to finalize the ... permanency plan”**
- FL 5-324



if petition  
granted

- Issue decree and accompanying order
- Schedule first guardianship review to occur not later than 180 days after the grant
- Direct submission of order closing the CINA case

if petition  
denied

- Make certain that the reasonable efforts determination in the TPR proceeding is made a part of the record in the CINA case
- Schedule six-month CINA review

# Review Hearings

- FL 5-324(b) (1)(vi) and 5 – 326
- At least once each year; however, first is to be within 180 days of grant of guardianship
- Towards Adoption
- Continued examination of permanency plan
- Specific factual reasonable efforts finding
- Specific Placement may be ordered

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If **lack of reasonable efforts**, notice has to go to certain persons and reasonable efforts hearing should be scheduled if not already remedied

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If determined that appropriate plan is other than Adoption or Custody and Guardianship, then it is Another Planned Permanent Living Arrangement (**APPLA**) and **compelling reason for plan must be articulated**

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**APPLA is prohibited for youth under 16 years of age** (Strengthening Families Act)



# child consultations

FL 5-326(c)

- At least every 12 months
- On the record or documented for the record
- If away from the court – parties have right to be present
- To be in “age-appropriate manner to obtain the child's views on permanency”





**I will be patiently waiting for your call!**

**larnzell martin, jr.**

**301-780-8004**

**301-520-6296 (cell)**

**301-390-0424 (home)**

**[lmartin@co.pg.md.us](mailto:lmartin@co.pg.md.us)**

**[larnzell.martin@mdcourts.gov](mailto:larnzell.martin@mdcourts.gov)**