



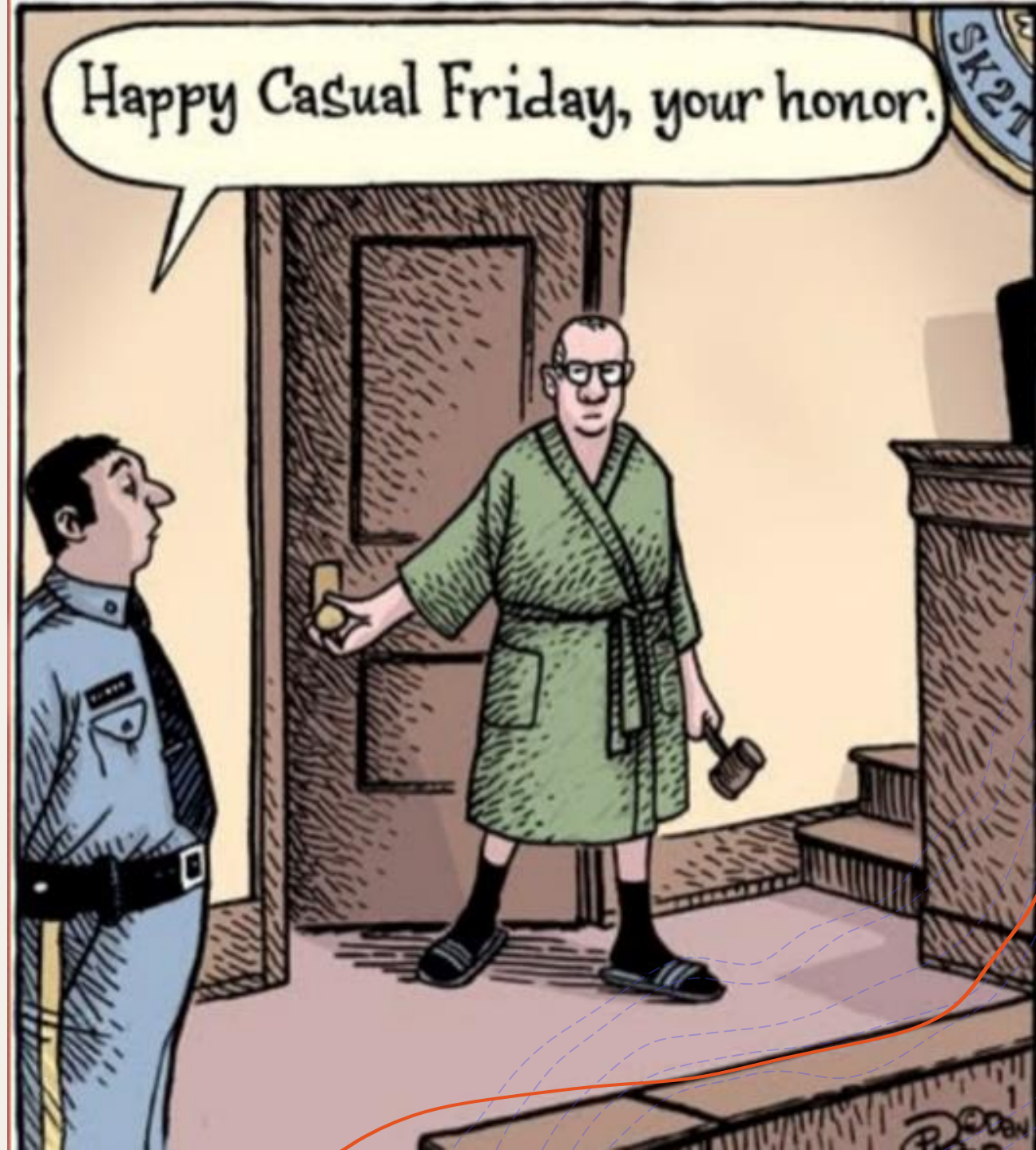
Navigating Review Hearings

With Special Emphasis on the Initial Review

HEARINGS & EVIDENCE

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Aren't Reviews
Informal?



ITIO C.H., 343 Ga. App. 1 (2017)

But perhaps the most troubling aspect of this case is that the parents' right to the custody, care, and control over their own children was almost entirely ignored when the court removed these children from their parents' custody without the State presenting *a single witness or a piece of evidence*.

ITIO C.H., 343 Ga. App. 1, 17 (concurring opinion)

ITIO C.H., 343 Ga. App. 1 (2017)

"Although our ruling in Division 1 renders moot the parents' remaining arguments, we are by no means condoning any additional procedural irregularities that occurred during the January review hearing. The Juvenile Code clearly contemplates that witnesses must be sworn and subject to cross-examination, hearsay will not be allowed (unless under a statutory exception), parties have the right to confront witnesses, and rules of evidence regarding the introduction of exhibits should be followed. Like the right to counsel, these rights are not optional. "
ITIO C.H., 343 Ga. App. 1, 13.

OCGA §15-11-210(b):

"[At the disposition hearing the Court] may consider any evidence, including hearsay evidence, that the court finds to be relevant, reliable, and necessary to determine the needs of a child adjudicated as a dependent child and the most appropriate disposition".

Old 15-11-56(a): "...all information helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value even though not otherwise competent in the hearing on the petition".

Hearsay at Review Hearings

- (f) The court may consider any evidence, **including hearsay evidence**, that the court finds to be relevant, reliable, and necessary to determine the needs of a child adjudicated as a dependent child and the most appropriate case plan and permanency plan. (O.C.G.A. § 15-11-216, effective Jan 1, 2022)

OCGA §15-11-218:

Review hearings require written findings of fact.

"At the conclusion of a periodic review hearing ... the court shall order one of the following dispositions:

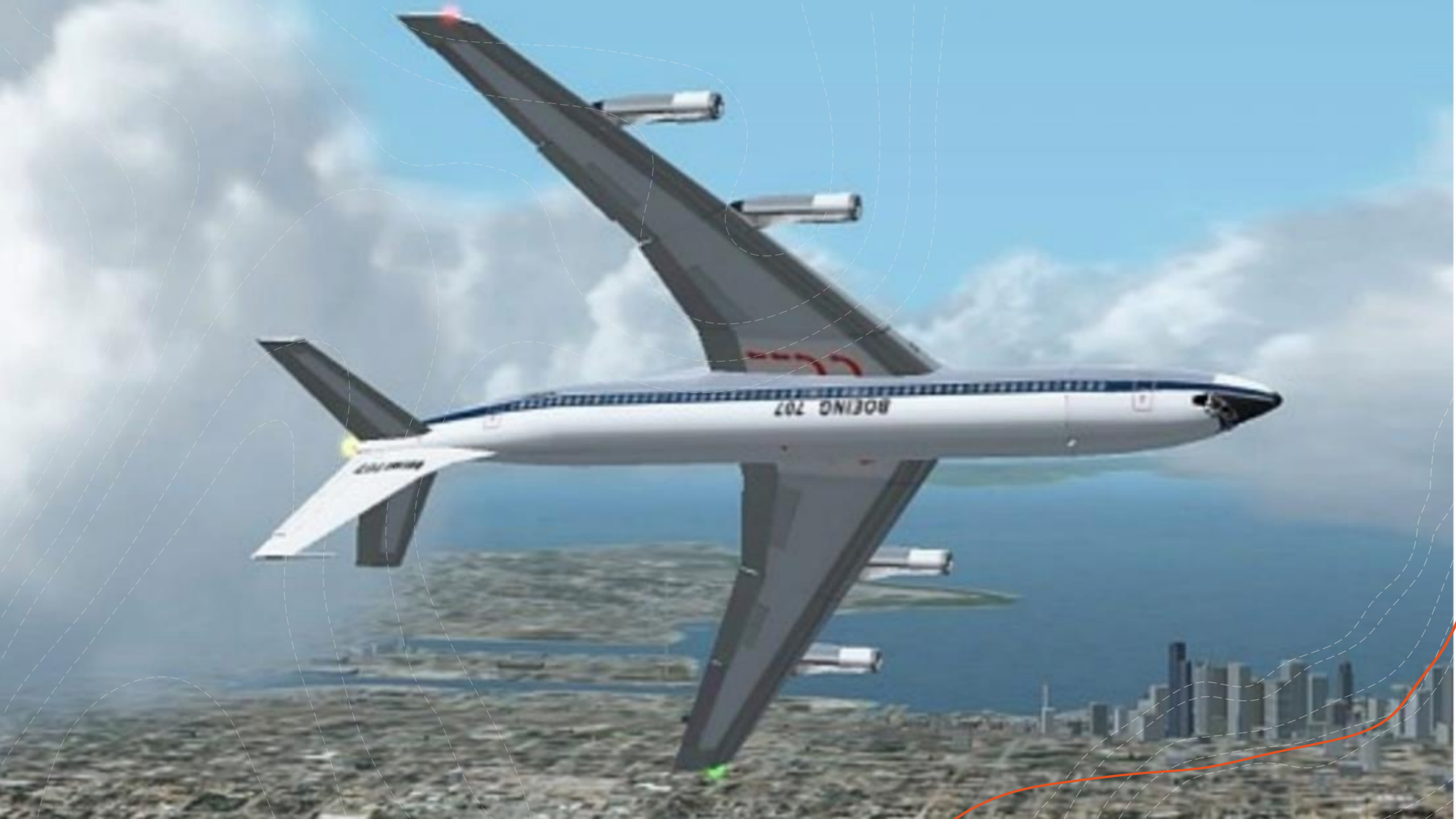
1. Return a child adjudicated as a dependent child to his or her parent ... with or without court imposed conditions;
2. Allow a child adjudicated as a dependent child to continue in the current custodial placement because the current placement is appropriate for such child's needs;
3. Allow a child adjudicated as a dependent child to continue in the current custodial placement although the current placement is no longer appropriate for such child's needs and direct DFCS to devise another plan..."



The “informality” of review hearings consists entirely in the fact that hearsay is admissible over objection.

Why An Adversarial System

- We are adversarial about EVIDENCE.
- We are not adversarial about PEOPLE.
- We are merely testing the reliability of facts.



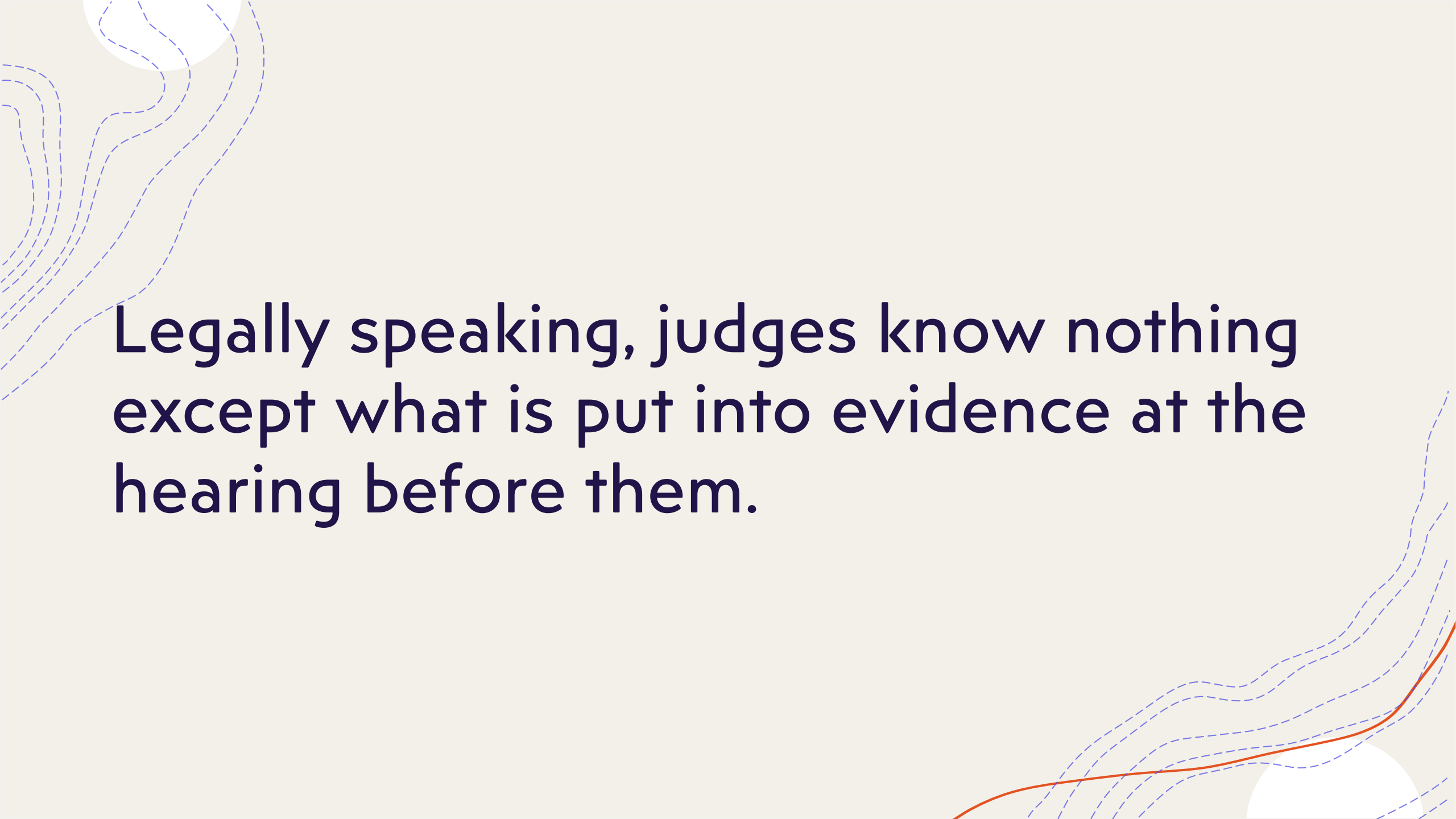


EVIDENCE = Facts a judge is allowed to use to create conclusions of law that bind the parties.



The 3 main ways judges can learn facts:

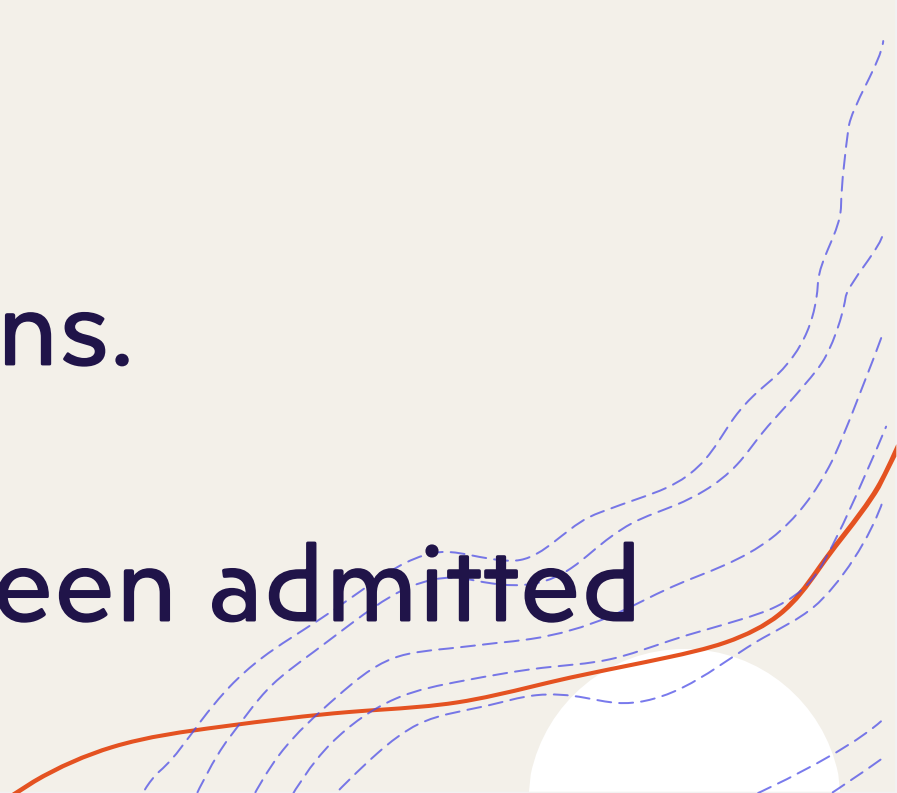
1. Sworn testimony of witnesses;
2. Properly-admitted documents, photos, etc.
3. Stipulations of the parties.

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Legally speaking, judges know nothing except what is put into evidence at the hearing before them.



The following are *not* evidence:

1. The judge's recollection of former cases & hearings (even in the same case).
 2. The judge's notes.
 3. Off-the-record conversations.
 4. Documents that have not been admitted into evidence.
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All of the
evidence
becomes the
record of the
case.

Nothing may
appear in the
order that is
not in the
record.

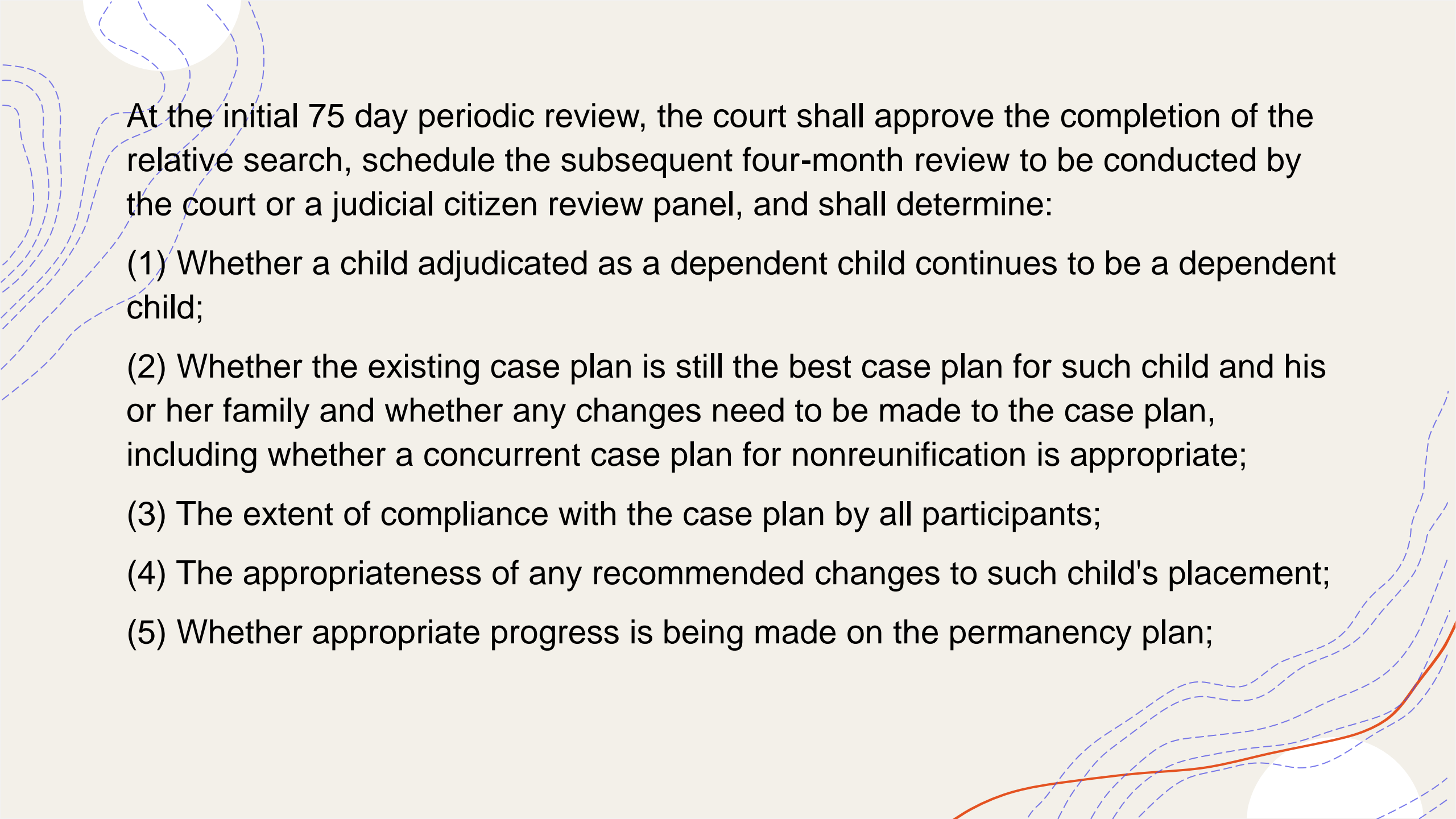
THE MECHANICS OF THE REVIEW HEARING



REVIEW HEARINGS

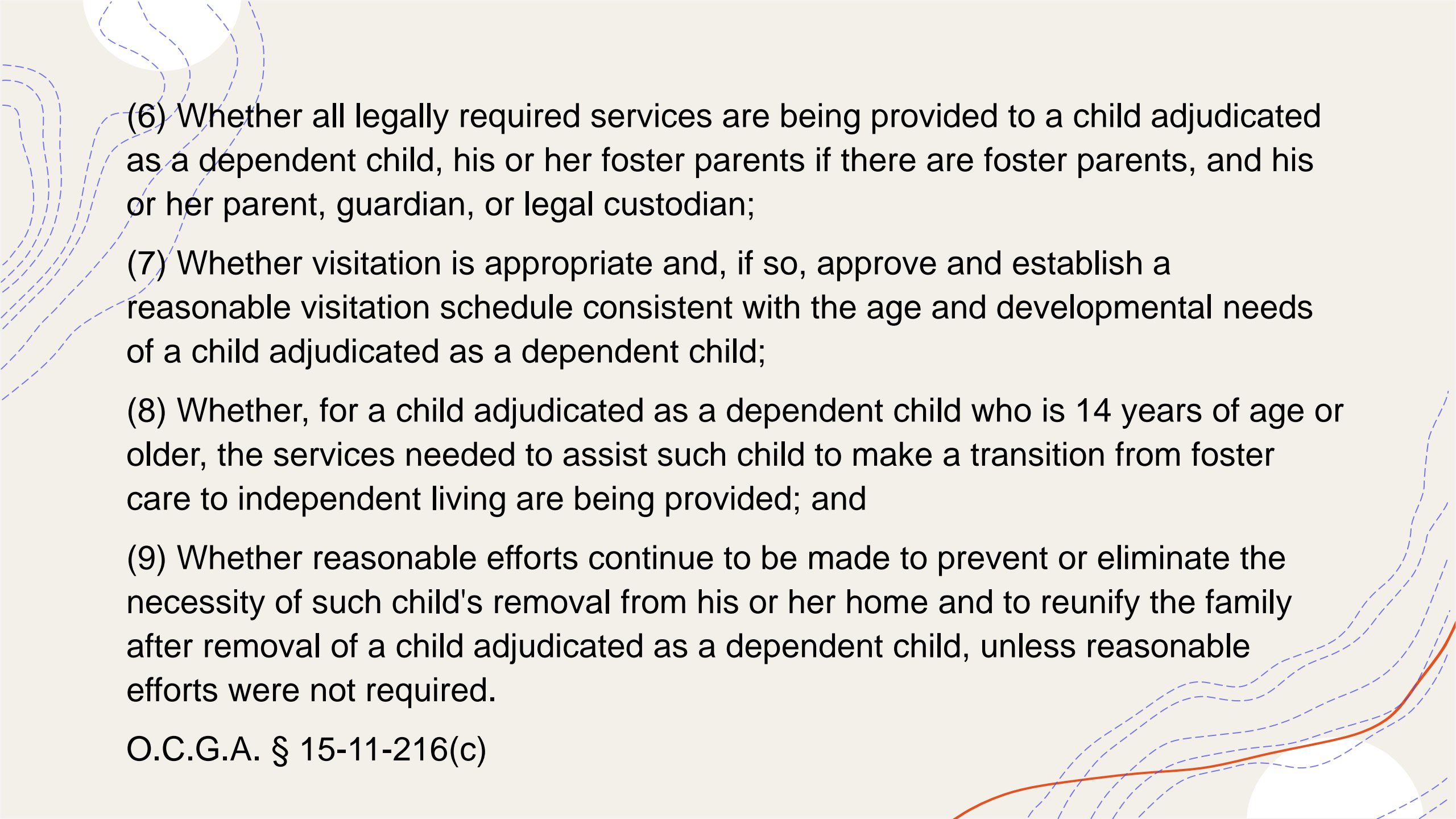
In the review hearing, the court determines the status of the child, reviews compliance with the case plan, and the possible need for case plan and placement changes to maintain focus on safety and permanency. Review is required for both out-of-home and in-home placements.

ASFA requires that the case plan be “reviewed periodically,” but not less than every six months (42 U.S.C. §675(5)(B)). Additionally, a permanency hearing must be held no more than 12 months after the date the child was first considered to have entered foster care (42 U.S.C. § 675(5)(C)) or no later than 30 days after a court determines that reasonable efforts to return a child to either parent are not required, whichever occurs first.

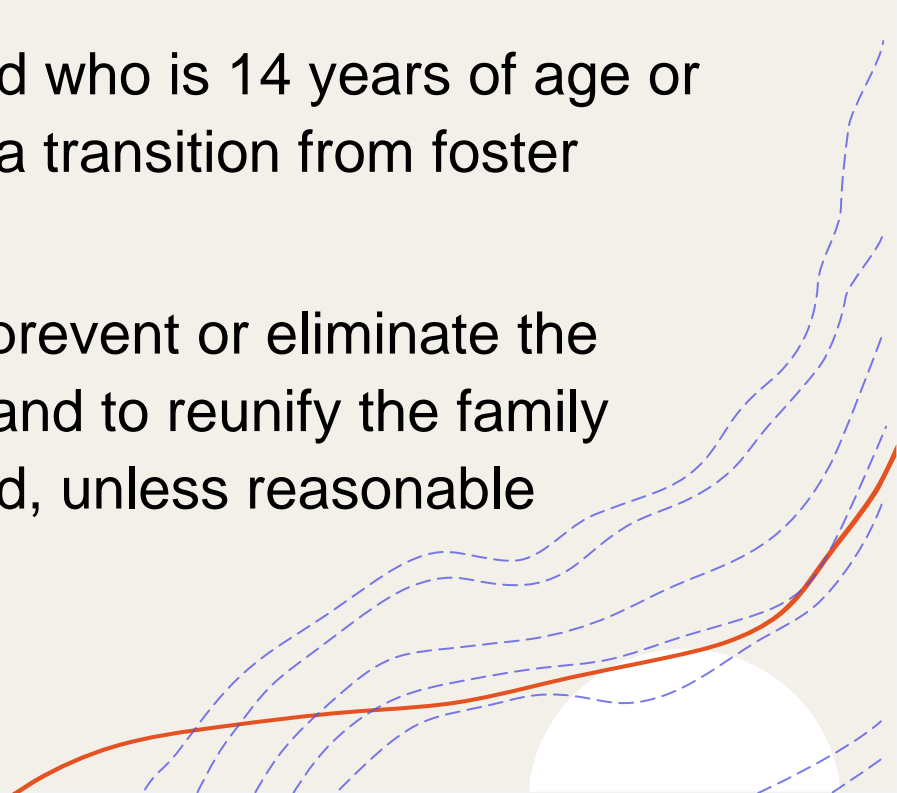


At the initial 75 day periodic review, the court shall approve the completion of the relative search, schedule the subsequent four-month review to be conducted by the court or a judicial citizen review panel, and shall determine:

- (1) Whether a child adjudicated as a dependent child continues to be a dependent child;
- (2) Whether the existing case plan is still the best case plan for such child and his or her family and whether any changes need to be made to the case plan, including whether a concurrent case plan for nonreunification is appropriate;
- (3) The extent of compliance with the case plan by all participants;
- (4) The appropriateness of any recommended changes to such child's placement;
- (5) Whether appropriate progress is being made on the permanency plan;

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- (6) Whether all legally required services are being provided to a child adjudicated as a dependent child, his or her foster parents if there are foster parents, and his or her parent, guardian, or legal custodian;
 - (7) Whether visitation is appropriate and, if so, approve and establish a reasonable visitation schedule consistent with the age and developmental needs of a child adjudicated as a dependent child;
 - (8) Whether, for a child adjudicated as a dependent child who is 14 years of age or older, the services needed to assist such child to make a transition from foster care to independent living are being provided; and
 - (9) Whether reasonable efforts continue to be made to prevent or eliminate the necessity of such child's removal from his or her home and to reunify the family after removal of a child adjudicated as a dependent child, unless reasonable efforts were not required.

O.C.G.A. § 15-11-216(c)



Conducting the Review Hearing

- *Open the Hearing

- Identify persons present and explain purpose of hearing

- *Engage parents, children, relatives and foster parents

- *Due Process Considerations

- Identification of Parents and Guardians

- Notice

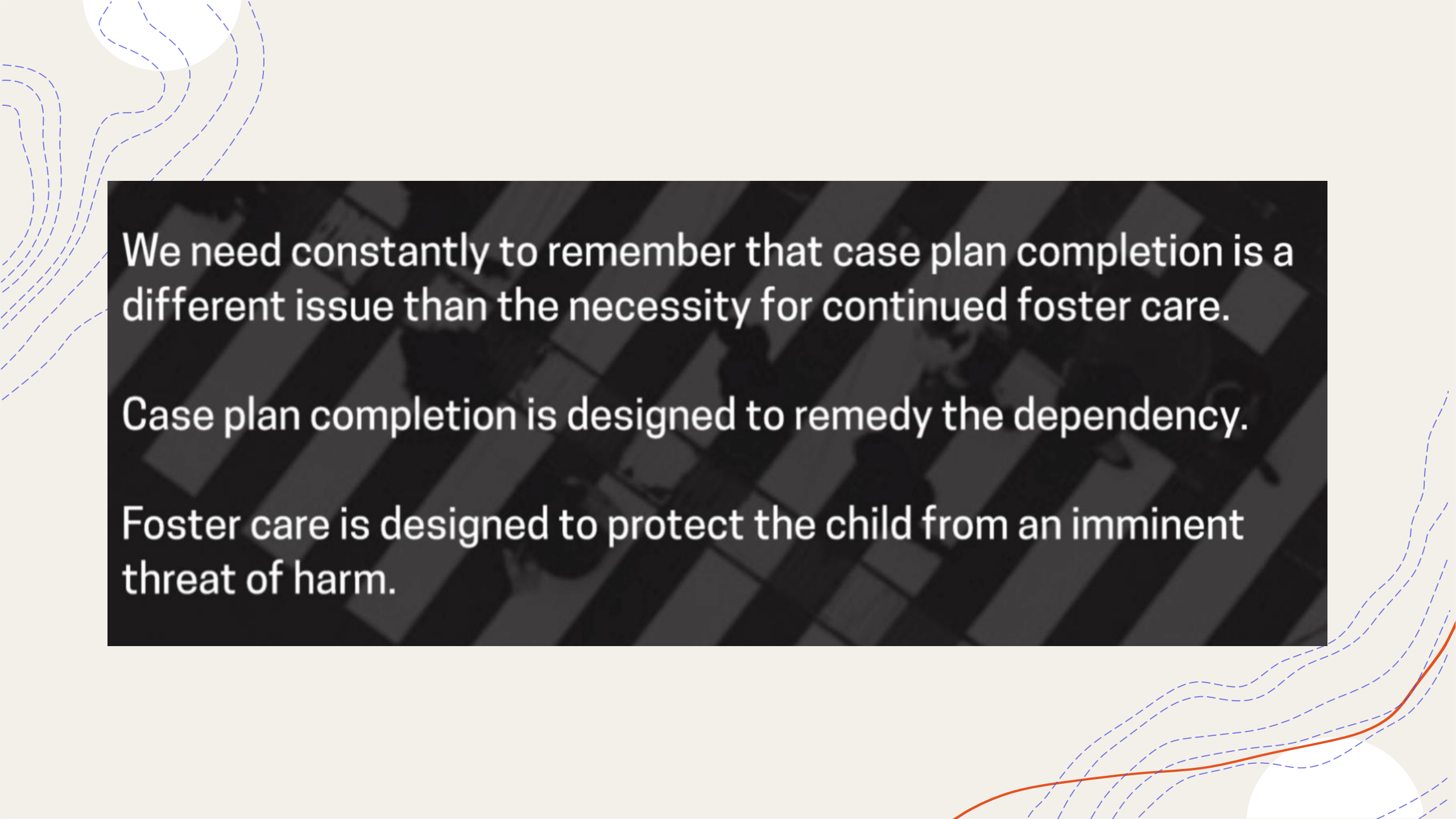
- Representation

- Competency and Understanding

- Applicability of other Federal Laws and Legislation

Key Decisions and Findings at the Review Hearing

- *Can the child be SAFELY returned to a parent today?
Is there a continuing necessity for out-of-home placement? (42 U.S.C. § 675(5)(B))
- *Does the court-approved, long-term permanent plan for the child remain the best plan for the child?
Is the placement appropriate? (42 U.S.C. § 675(5))
- *Is the agency making reasonable efforts to rehabilitate the family and effect the safe reunification of the child and family, or to effectuate another court-ordered permanency plan? (45 C.F.R. § 1356.21(b))

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We need constantly to remember that case plan completion is a different issue than the necessity for continued foster care.

Case plan completion is designed to remedy the dependency.

Foster care is designed to protect the child from an imminent threat of harm.

§ 15-11-104. Guardian ad litem of alleged dependent child

- (a) The court shall appoint a guardian ad litem for an alleged dependent child.
- (d) A court shall appoint a CASA to act as guardian ad litem whenever possible, and a CASA may be appointed in addition to an attorney who is serving as a guardian ad litem.
- (k) The court shall ensure that parties have the ability to challenge recommendations made by the guardian ad litem or the factual basis for the recommendations in accordance with the rules of evidence applicable to the specific proceeding.

§ 15-11-105. Factors to be considered by the guardian ad litem relating to the best interest of a child

(c) Unless **a child's circumstances** render the following duties and responsibilities unreasonable, a guardian ad litem shall at a minimum:

... 15) Provide **written reports** to the court and the parties on the child's best interests, including, but not limited to, recommendations regarding placement of such child, updates on such child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, such child's degree of participation during visitations, and any other recommendations based on the best interests of the child.

Findings of Fact and Conclusions of Law at the Review Hearing

- *Be written in easily understandable language, which allows the parents and all parties to fully understand what action they must take to have their children returned to their care as well as timeframes for completion of various tasks;
- *Set forth findings explaining why the children are in need of continued placement outside the parents' home or continued court supervision, including the specific risks to the children;
- *Set forth findings as to whether and why family reunification and an end to court supervision continues to be the long-term case goal;

Findings of Fact and Conclusions of Law at the Review Hearing

- *Approve proposed changes in the case plan and set forth any court-ordered modifications needed as a result of information presented at the review;
- *Identify an expected date of final reunification or other permanency plan for the child;
- *Set forth orders for the agency to make additional efforts necessary to meet the needs of the family and move the case toward completion;
- *Make any other orders necessary to resolve the problems that are preventing reunification or the completion of another permanency plan for the child; and
- *Set a date and time for the next hearing, if needed.



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