

Ineffective Assistance of Counsel - Suggested Judicial Colloquy

J.B. v. DCF, 170 So. 3d (Fla. 2015) (interim procedure; may be superseded by Juvenile Rules)

At the close of evidence in the TPR trial and before entry of a termination order, advise the parent:

1. You have been represented by a court appointed attorney during this case, and have a right to effective legal assistance from your attorney. Effective legal assistance means your court appointed attorney's assistance was reasonable and professional. If the court enters an order terminating your parental rights, and you believe your attorney failed to provide reasonable, professional legal services in a way that changed the outcome of the trial, you have a right to file a motion claiming ineffective assistance of counsel.
2. If you believe your attorney failed to provide reasonable legal services in a way that changed the outcome of the trial and you want to file such a motion, tell your trial attorney. He/she will then withdraw.
3. Unless you hire an attorney to assist you with the motion, you must prepare and file it yourself. There is no right to a court appointed attorney to help with a motion claiming ineffective assistance.
4. You have 20 days after the TPR order is entered to file the motion. If you file the motion late, it will be denied.
5. The motion must contain the case name and number, and the date of the court order granting TPR. [*J.B.* does not say whether the motion should be under oath, but best practice suggests it should be.]
6. The motion must contain specific examples of things the attorney did or did not do during the TPR proceedings that show how the attorney's mistakes prejudiced your case to the extent that the result would have been different, but for the poor performance.
7. The original motion must be filed with the clerk of court with copies immediately provided to the parties. The court may set a hearing on the motion if it is legally sufficient.
8. At the hearing it is your responsibility to prove the claims you made in the motion and that your attorney provided ineffective assistance. You may prove your claims by presenting documentary evidence or witness testimony.
9. If the court grants your motion, a new trial attorney will be appointed and a new TPR trial will be scheduled.
10. If the court denies your motion, you will have 30 days from the entry of the order denying the motion to appeal the order terminating parental rights and to appeal the order denying your claim of ineffective assistance. The court will appoint a new attorney to help you with the appeal, if one has not already been appointed.

Do you have any questions?

Optional: also provide 1 - 10 in writing and note on the record its delivery to the parent.
(Similar information must be included in the written TPR order.)