

PROTECTIVE SERVICES AND CHILD FOSTER CARE COURTROOM TESTIMONY

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The reality of the courtroom is that the “truth” in the courtroom is whatever the trier of fact believes it to be. Is that “fair?” – “fair” is a place they sell cotton candy. This is why testimony and how it is perceived is critical to the case.

THE ADVERSARIAL PROCESS

The adversarial process is based on the proposition that while both sides are critical of one another’s case, in such a fray, the truth will come out. The adversarial process allows each side to argue and question their opponent’s assertions. The keys to success in this process are preparation and maintaining one’s professionalism.

- **You** have the burden of proof, the other side does not have to prove anything
- **You** are responsible for bringing forward evidence which includes testimony, physical evidence, photographs, and reports

PREPARING TO TESTIFY

- **Your** testimony begins the first time you start an investigation, write a report, or accumulate information. This is all subject to discovery and becomes the premise for the defense attorney’s cross examination.
- **Your** reports should be objective, descriptive, and concise. Be prepared to defend your report in the courtroom. Your report should communicate facts and details without forming conclusions.
- Speak with your attorney prior to the hearing. Even a small amount of time can be well spent to assure that you share important information and share the same goals in the case.
- Prepare, Prepare, Prepare, create a timeline, time chart, or diagram. These devices have the ability to summarize and visualize testimony. This can be especially useful to fact patterns which have occurred over a long duration.

- Practice out loud. Hear yourself describing your case. Talk to co-workers about your case so you can practice hearing yourself articulate the case. When you take the stand this should not be the first time you hear yourself describing your case.
- Relax the night before the hearing. Preparation is the best defense to stress. Pamper yourself and avoid compounding the stress.

DAY OF HEARING

- Get up early and review, eat something, as if you are about to take a test.
- Dress appropriately and professionally. You want to convey that you understand the importance of this proceeding and you take it seriously.
- Get to court early in order to meet with attorney and to avoid extra unnecessary stress.

THE DIRECT EXAMINATION PROCEDURE

- Direct examination is followed by cross-examination
Possibly followed by re-direct and re-cross

DIRECT EXAMINATION IS ALL ABOUT THE WITNESS

In order to be found prepared, credible, and professional a witness must testify with confidence. The testimony should be told in an active voice, rather than a passive voice. The testimony must be loud enough to be heard and slow and deliberate enough to be understood.

The discussion of the six:

(1) Who _____

(2) What _____

(3) When _____

(4) Where _____

(5) Explain _____

(6) Describe – Which incorporates describing detail and demeanor *without* drawing conclusions

- An effective direct examination is a compelling conversation
- Leading questions are not allowed, the witness must do the testifying
- Listen carefully to the question
- If you don't understand the question, the correct answer is "***I don't understand***"
- If you don't know the answer, the correct answer is "***I don't know the answer***"
- Stay in your expertise – don't speculate - watch stray opinions
- If you made a mistake or omission – ***admit it*** – a mistake will be forgiven but a denial will not
- Recognize the presence of the jury and acknowledge
- Be aware of body language
- Refrain from shoptalk or jargon
- Remember if you're being candid there are no wrong answers

REFRESHING MEMORY

The credible, prepared, and professional witness can generally testify without notes. However, if the case involves a detailed fact pattern over a long amount of time, the witness may request to take a file up to the stand and at the discretion of the court, refer to the file. Occasionally, the prepared witness may just forget a detail. When this happens, the attorney may ask to refresh the memory of the witness with a document.

CROSS EXAMINATION

Cross examination provides the defense attorney the opportunity to challenge your facts, statements, and credibility. Attorneys are supposed to zealously represent their client.

IT IS ALL ABOUT THE ATTORNEY

This is when the attorney asks leading questions, in essence testifies, and proceeds to use the witness to make the case. There are various cross-examination techniques, but the two most common are a *destructive* cross exam (uncomfortable but easy) and a *concession* based cross-exam (comfortable but dangerous).

- **Only** answer the question asked
- **Only** provide the necessary information and nothing else
- Watch for the six (discussed in direct examination)
- Watch for your opening of the six – *this is when the attorney has lost control*
- Professionalism requires that you **DO NOT** argue with the lawyer even if the lawyer is prodding you
- Refrain from sarcasm, humor, cute answers. Stay the *most professional person* in the courtroom, even when others are not
- Refrain from facial expressions, eye rolling, and demonstrative movement
- Admit mistakes and/or inconsistencies with candor
- Don't allow attorneys to take you into a different set of expertise
- If you are answering yes to every question – **WATCH OUT** – the cross which makes you comfortable is the most dangerous cross examination

COMMON CROSS-EXAMINATION TOPICS

Protective Services

- Quality of the Investigation. The investigation went too fast, was sloppy, or only investigated the petitioners point of view
- The case was personal or biased, and therefore not professional
- Cross-examination on irrelevant details
- Failed to follow proper procedures and protocol

Foster Care

- Problems with programming or reunification plan
- The case is personalized or biased
- Fail to follow proper procedures and protocol
- Funding issues in regard to the plan

OBJECTIONS

An attorney may object for a number of reasons: for impact, disruption, and tactical purposes. The witness should *immediately stop testifying* and listen to the nature of the objection and the court's ruling on the objection. The court's ruling will allow the witness to understand what was or was not objectionable, which could be valuable information to the witness.

IN CONCLUSION

The testimony in child protective proceedings requires you testify in a credible, prepared, and professional manner. Every opportunity to testify is analogous to an extremely important test. However, as long as you tell the truth and testify in a professional and courteous manner, it is a test you cannot fail.

Notes: _____

The American Bar Association Center of Children and the Law – Advanced Courtroom Skills for Caseworkers Presentation Curriculum (November 2005) developed by Cecilia Fiermonte, was helpful in the organization of this supplement. In addition, various Judges and practicing neglect/ abuse attorneys provided suggestions which were helpful in putting together this lecture supplement.