

BEST PRACTICES

TESTIFYING IN COURT

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The purpose of a trial or hearing is to present facts or evidence upon which the Court will base its decision.

What are the basics of this Court process?

EVIDENCE: Evidence is anything presented in support of an assertion. Evidence can be the personal observations of a witness, opinions of experts, legal conclusions, or the recommendations of a CASA/GAL.

HEARSAY: When a witness testifies before a Court, one potential problem that may be encountered is hearsay. Hearsay is essentially relayed information. Courts cannot rely on relayed information because it is prone to intentional or unintentional corruption (such as the telephone game). It is inherently limited in detail, it cannot be cross examined, and it is unfair as the person who originally made the statement may not be present in court to answer questions.

Exception to Hearsay: Anything that opposing parties say is admissible against them.

Important Hearsay Strategies as a Witness: Do not invite a hearsay objection – never telegraph to opposing counsel that you are about to testify to hearsay. For Example:

- “I don’t know if I’m allowed to say this because it is hearsay.”
- “He/She told me....”
- “I read that...”
- “According to prior reports...”

PREPARING TO TESTIFY: Write out a timeline starting with when the Child came into care to the present. Try to include placements, schools, and services for the Child as well as the behaviors and compliance of the Parents. Well-written reports throughout the case will make the process of writing out a timeline very easy.

Contents of the timeline can include:

1. Dates the Child entered care
2. Reasons the Child entered care
3. Services offered to Parents and Child
4. Schools and Placements of the Child
5. Parent Behavior
6. Placement observations
7. Parent/Child observations
8. Meetings attended
9. Court Hearings attended

Remember that you should not expect to take your notes to the witness stand with you. However, if you are presented with your Guardian report while on the witness stand and are asked a question that you are not sure of, you may ask to have a moment to refresh your memory and to review your report. You may then answer the question after you have refreshed your memory. You are not allowed to read directly from your report.

PRACTICE YOUR TESTIMONY: You will not have your exact testimony memorized and that is good. However, you do want to have facts and basic information available to you and at the ready. Practice a voice and a demeanor so that you will not be rattled on the stand.

If your statements seem confusing, contradictory or unpersuasive to someone who is already inclined to accept your point of view, go back to your timeline and review. Determine which points support your position and edit your talking points accordingly.

At the same time, try to guess what issues may be brought up to you. Develop answers to those issues based on the facts and observations you have made.

*****REMEMBER, ALWAYS, ALWAYS, ALWAYS TELL THE TRUTH*****

It is important to be comfortable with the details of your testimony. As previously mentioned, you do not want to memorize your testimony or talking points because this could make you sound rehearsed. If you try to memorize the testimony, you may end up sounding less confident – not because you do not believe in your testimony but because it could seem as if you are “making up” your testimony or are confused.

How do I prepare to testify at a Permanent Custody trial?

A permanent custody trial is the proceeding in which the Parent-Child legal relationship is severed forever. It is governed by state law, and in Ohio this is Ohio Revised Code Section 2151. Such a decision can be based upon, among other things, abandonment by a parent, child abuse, unfitness of a parent, neglect and other injuries to a child. The parent whose rights are being terminated has certain due process rights, such as proper notice and hearing.

To prepare to testify at a permanent custody trial, you need to complete the following:

1. Make certain that you have observed the Child with the Parents. Make every attempt to do so and document when and where you observed the parties. If there is a no contact order that prohibits a parent from being in contact with a child, document this.
2. Make certain to visit the Child in his or her placement, whether that be in the foster placement, relative home, or group home/residential facility.
3. Meet with or otherwise speak with the Parents.
4. Speak with service providers for the Parents and Child.
5. Review service provider records for Parents and Child.
6. Speak with the caseworker for any updates.
7. Speak with teachers, school counselors, and daycare providers.
8. Review school records, medical records and counseling records for the Child.
9. Review all pleadings in the case and case plans created by LCCS.
10. Write a permanent custody guardian ad litem report and recommendations that supplement your original report created for the adjudication/disposition hearing in the case.

Create the timeline as referenced above and include the information that you have gathered in items 1 - 10 above.

Consider in advance the questions that will be asked of you, many of which will be whether you have done the things listed in items 1 - 10 above.

Make sure you can answer the questions below:

1. Have the Parents remedied the risks that brought the Child into care?
2. Have the Parents meaningfully engaged in and successfully completed case plan services.
3. Have the Parents truly internalized the services they have engaged in?
4. Have the Parents actually changed their thinking patterns, lifestyle and decision making, and is this change creating a benefit for the Child?
5. Conversely, are the Parents' actions continuing to negatively impact the Child?
6. Have the Parents visited with the Child? Are visits consistent and are they appropriate?
7. What is the relationship between the Child and the Parent?
8. What services were offered to the Child? What is the Child's progress?
9. If the Child is school age or in pre-school, what is the Child's progress?
10. Does the Child have special needs and what level of care or parental skills are required for those needs?
11. Have you considered the appropriateness of relatives, if they are available, and if they have requested to be considered for placement/custody?
12. Why is permanent custody in the best interests of the Child?

REMEMBER – when you actually take the witness stand, speak clearly and convincingly. Speak with confidence, speak with passion. The permanent custody trial is not the time for brainstorming. You should be able to answer the question, “Is there anything more that could be done to help these Parents”, with a definite “no.” You will now know your case inside and out, and YOU absolutely know the reasoning for your recommendation. This will come out naturally and this then is convincing in and of itself. Give your recommendation **WITHOUT HESITATION!**

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FINAL TIPS

1. Always speak the truth.
2. Speak clearly and with confidence.
3. If you do not understand a question, say so or ask to have it repeated.
4. If you do not know the answer to a question, do not guess. It is perfectly appropriate to answer "I do not know".
5. Use simple and straight forward language in your answers.
6. Answer "yes" or "no" when possible.
7. You can refresh your memory by reviewing your report.
8. It is understandable that you have strong feelings about the Child and that you may display these feelings in your testimony, especially if you are asked difficult questions by sometimes difficult attorneys. However, do not become angry, aggressive or confrontational. Just keep it professional. Remember, this is not personal.
9. If you make a mistake in your testimony, admit it as soon as you recognize it and correct it.
10. If you are asked rapid fire questions, do not panic. Think clearly and answer slowly.
11. Wait until a question is completely asked before you answer.
12. Take a breath before you answer and compose your thoughts.
13. If there is an objection, stop and do not answer until told to do so by the Judge.
14. Listen to the question asked and answer just that question.
15. Try as much as possible to restate your talking points from direct exam when on cross exam.
16. Know any weaknesses in your advocacy and consider how your recommendation is still valid and the right decision despite these weaknesses.
17. Avoid any appearance of bias.
18. Speak to the Court with respect.
19. Be mindful of your body language.
20. Dress comfortably but professionally.

SAMPLE TESTIMONY AT A PERMANENT CUSTODY TRIAL

1. State your name for the record.
2. Are you a certified CASA/GAL?
3. Please describe your training?
4. Are you compliant and current in your training requirements?
5. Are you Rule 48 compliant?
6. How long have you been a CASA/GAL?
7. How many cases have you served as a CASA/GAL?

Questions concerning the case – visits, education, services:

1. How are you involved in this case?
2. When were you appointed as the CASA/GAL?
3. Describe what you have done as CASA/GAL on this case.
4. Have you visited the Child? How often and where?
5. Have you spoken to the Child privately?
6. Have you spoken with the Child's teacher, counselor, therapists, doctors, and any other service providers?
7. Have you spoken with the current caregiver for the Child (i.e. relative placement, foster placement, group home/facility, free home)?
8. Have you reviewed medical, school, mental health and any other service provider records for the Child?
9. Have you met with the Parents?
10. If so, where, for how long, and how often?
11. Have you inspected/visited the homes of each of the Parents?
12. Have you spoken with the Parents' service providers, i.e. counselors, therapists, doctors, advocates, probation/parole officers?
13. Have you reviewed medical, mental health, criminal, court, and any other service provider records for the Parents?
14. Have you spoken with any relatives?
15. Have you attended all court hearings?
16. Have you created a report and recommendations in this matter?
17. What is your recommendation and why is this in the best interests of the Child?
18. Have you been present in this courtroom for the duration of this trial?
19. Have you heard anything during this trial that changes your recommendation?