

Case Management

Lab 1: Courtroom Testimony



*Florida Department of Children and Families
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Courtroom Testimony:

The Fundamentals

Learning

Objectives:

1. Discuss activities necessary for preparation for court testimony.
2. Explain “*hearsay*” and how this legal term is likely to surface in child welfare hearings.
3. Practice using appropriate responses to questions asked during testimony.
4. Discuss strategies and tactics used in court and demonstrate appropriate responses.

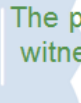
References:

39.01(51), F.S. –Definitions


Role of the Courts



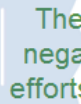
The Power of Courts




The power to subpoena witnesses, documents and records.




The power to assist child welfare investigations.




The power to make negative “reasonable efforts” determinations.



The power to hold individuals in contempt.




The power to order treatment.




Inherent power of the position.


The Rights of Parents and Children




The right of family integrity.




The power to notice of the proceedings.




The right to a hearing.



The right to a jury trial.



The right to counsel and a Guardian ad Litem.



The entitlement to reasonable efforts.

Judges' Expectations

- Know the law and follow court rules.
- Prepare effective documentation and testimony.
- Engage clients in the court process.
- Work effectively with others.
- Arrive on time.
- Follow court decorum.
- Follow appropriate court orders.



Children's Legal Services

- Power to subpoena witnesses.
- Power to subpoena documents and records.
- Power to assist child welfare investigations.

Courtroom Presentation

- You are a professional witness in the courtroom.
- Your job is to be the expert on your case, and the information that is crucial to present in the proceeding.
- The role of CLS is:
 - Help guide and support you prior to and during the hearing.
 - Be the expert on the rules of the courtroom proceedings, as well as any preferences of a local court and presiding judge.
 - Guides the preparation of any written information that must be submitted to the court to ensure that it is sufficient from a legal perspective.

Reputation

- You are a representative of your agency and the State of Florida.
- Showing a strong command of the information you gathered and assessed to support the judicial actions build your professional reputation and credibility.

Preparing for Court

Meet with CLS lawyer

- Know all the facts of your case.
- Share all information – the good, the bad, and the ugly.
- Know everything that everyone on the team did on the case (supervisors, previous CPI/CM, other expertise).

Know your case, know the facts!

- Current child functioning information including
 - how they are doing in school,
 - special medical needs, etc.
- Parent information (adult functioning, parenting)
 - cooperation with safety plan/case plan,
 - case plan compliance,
 - behavior change, unusual issues.

Courtroom Behavior and Decorum

- Wear tasteful and appropriate clothing.
- Unless physically challenged, rise when the judge enters the room and remains standing until the judge invites everyone to be seated.
- When the court adjourns, stand in place until the judge is no longer visible.
- When the court is in session, no one should be heard except the counsel, judge or witness.
- No food or drink.
- No cameras or recording.
- Phones turned off.
- No inappropriate facial gestures.
- Repeated entrances and departures should be avoided.

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Activity A: Courtroom Etiquette

Directions:

1. View the video on Courtroom Etiquette.
2. Make note of any questions you may have.
3. Be prepared to discuss.

Activity Notes:

[illegible]

Courtroom Presentation, Attire

Courtroom Presentation, Attire-Men



Trial – All business...
shirt and tie,
jacket preferred

Hearings/Judicial
Review –
Business casual...
button-down or
polo shirt



Courtroom Presentation, Attire-Women



Trial- All business
Skirt or pants suit.
Skirts should not be more than
2 inches above knee.
No sandals. Open-toed shoes ok
but closed-toe preferred

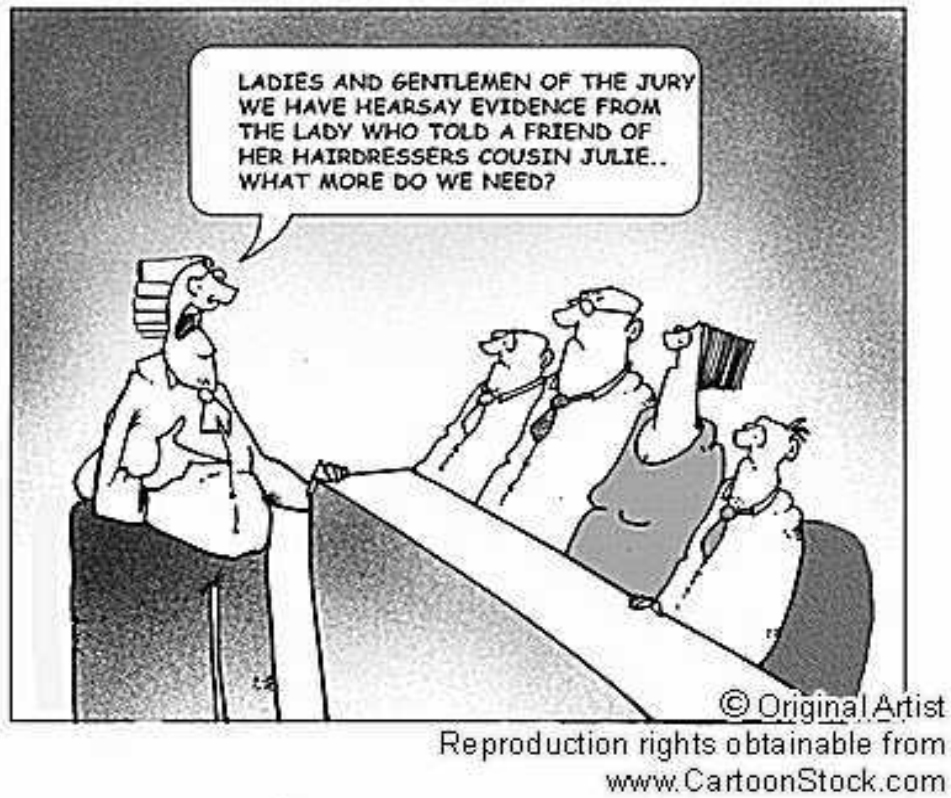


Hearings/Judicial Reviews –
Business Casual
Skirt or slacks.
Blouse or button down shirt.
No sleeveless shirt unless
wearing a jacket.



- When preparing for a court appearance, you should do the following:
 - Meet with CLS regarding your testimony.
 - Review the file, chronological notes and facts of the case.
 - Seek assistance from your supervisor.
 - Always answer questions with facts of which you have knowledge. You were called into court for your professional knowledge, not your personal opinion.
 - **Never be afraid to tell the court "I do not know, but I can find out and get back with you" rather than giving an uncertain answer.**
- Credibility is also weighed by appearance. It is important for each of us to always retain our professionalism whether we are in court or are meeting with the family.
Remember, our appearance, demeanor and behavior reflects on both our personal reputation and the department's professionalism and reputation.

Hearsay



- It is CLS's job to worry about hearsay.
 - If CLS or the Judge asks you what was said, answer the question. Let them decide if it is evidence or not.
-
-
-

Court Testimony, Short List

**Be normal.
Be truthful.
Be courteous.
Be compassionate.
Be complete.
Be succinct.**

What other opportunities are there in the courtroom for demonstrating courtesy?

How can the Child Welfare Professional show compassion in the courtroom?

Be prepared to answer:

- What education and training do you have?
- What experience do you have?
- How do you know this child(ren)?
- What brought this case to dependency court?

Guidelines for Effective Testimony

Make good impressions on the judge with appropriate courtroom demeanor:

- Professional dress
- Businesslike conduct
- Positive body language
- Proper etiquette

Listen to each question fully.

- Do not attempt to answer the question before it has been asked.
- Do not answer questions that have not been asked.
- Volunteer nothing but answer everything.

Think for a few seconds about the question and your reply before answering.

- Do not rush into an answer.
- Be sure you understand the question.
- If you are confronted with a question for which you do not know the answer, the only truthful response is, "I don't know" or "I don't remember". When you are not positive, you can say, "As I remember,"

Answer all questions you are asked, and answer only the questions you are asked. Do not hesitate to ask for clarification or restatement of a question if it is not fully understood.

- Whenever you hear the word "object," stop and wait for the instructions from the judge about answering or not answering the question. Do not continue to answer a question once an objection has been made, or answer the objection (e.g., "It is not hearsay.") You do not have the right to object or refuse to answer. Your attorney's role is to make objections and argue the points to the court.
- Do not be browbeaten into making statements that are not in accordance with your recollection of knowledge.
- Tell the truth as you know it and maintain your position, whether it pleases opposing counsel or not.
- Never try to guess the answer to a question.
- Opposing counsel may try to elicit information from you.
- Avoid unsolicited explanations, background, suggestions, and illustrative anecdotes.
- Try to answer all questions by reference to your own sensations or actions, for example,
 - "I saw..."
 - "I heard..."
 - "I did..."
- Avoid the following expressions:
 - "I assume..."
 - "I guess..."
 - "I suppose..."
- Jokes/humor is not appropriate - avoid sarcasm and informalities.
- It is perfectly normal to refer to notes/file but ask to do so first.
 - You may refresh your memory by referring to your notes; however, there are

special procedures for doing so.

- You must first state that you do not remember an answer but that the answer is in your notes. CLS will then ask the Judge for permission for you to review your notes. Once permitted to look at your notes, read them to yourself briefly, then close your notes and answer the question from personal knowledge.
- Do not fail to refer to your notes when necessary because you fear that opposing counsel will ask to look at your notes.
- If you cannot remember events after reading your notes, let your attorney know immediately.

Control your temper, no matter what the provocation.

- It is a common technique to excite a witness in order to handicap their reasoning powers.
- An angry witness is not an effective witness.
- By the same token, do not be co-opted. Counsel with a friendly demeanor is to be treated exactly the same as an impersonal or unfriendly counsel.
- Facial expressions, sarcasm and laughter will not appear on the transcripts. Avoid humor in the courtroom. Do not try to be clever or cute.
- If you are in discomfort while on the witness stand, you may ask for relief, e.g. a glass of water or the opportunity to go to the bathroom.
- In a firm and decisive voice, answer each question completely but succinctly.
- Know whether your voice tone tends to be soft or low, and make a concerted effort to speak louder and clearly in the courtroom.
- If the cross-examiner asks a question with an implied or explicit factual basis that is incorrect, you may:
 - correct factual basis before you answer, or
 - ask for clarification or restatement, or
 - simply say “Not true”
- Do what is most likely to be helpful in making the truth known to the court.

Cross-Examination Tactics

Tactic	Example	Purpose	Response
Rapid fire questions.	One question after another with little time to respond.	To confuse the witness; attempt to force inconsistent answers.	Take time to consider question; be deliberate answering; ask to have question repeated; remain calm.
Condescending counsel.	Over-sympathetic in questions to the point of ridicule.	To give the impression that the witness is inept, lacks confidence, or may not be a reliable witness.	Give firm, decisive answers, ask for the questions to be repeated if improperly phrased.
Badgering, belligerent.	Counsel staring you in the face, shouts, "That so, isn't it?"	To make witness angry so that he/she loses sense of logic and calmness. Generally, rapid "??s" will also be included in this approach.	Stay calm; speak in a deliberate voice; give opposing attorney time to make appropriate objections.
Staring.	After the witness answered, counsel stares as though there is more to come, creating long pause that one internally fills must be filled, thus saying more than necessary.	To provoke the witness into offering more than the question asks.	Wait for the next question.
Mispronouncing witness's name.	Witness's name is Arnie; counsel calls him Barney.	To draw the witness's attention to the error in pronunciation after enabling him to concentrate on the question asked so that witness will make inadvertent errors in testimony.	Ignore the mispronunciation; concentrate on the question counsel is asking.
Suggestive question (tends to be a leading question; allowable on cross-examination).	Wasn't the mother always willing to talk?	To suggest an answer to the question in an attempt to confuse or to lead the witness.	Concentrate carefully on the facts; disregard the suggestion. Answer the question.

Tactic	Example	Purpose	Response
Demanding a “yes” or “no” answer to a question that needs explanation.	Did you open this case without seeing the child?	To prevent all pertinent and mitigating detail from being considered by the jury.	Explain the answer to the question. If stopped by the counsel’s demanding a “yes” or “no” answer, pause until the court instructs you to answer in your own words.
Reversing witness’s words.	Witness answer, “The neighbor was inside the house; Mrs. Doe and the children were outside.” Counsel says, “Now, you say that the neighbor was outside and Mrs. Doe and the child were inside.”	To confuse the witness and demonstrate a lack of confidence in the witness.	Listen intently whenever counsel repeats back something you have said. If he or she makes an error, correct him or her.
Repetitious questions.	The same question asked several times slightly rephrased.	To obtain inconsistent or conflicting answers from the witness.	Listen carefully to the question and state, “I have just answered that question.”
Compound question.	Asking a question that calls for a positive and negative answer.	To try to make the witness answer both questions either positively or negatively.	Answer each question separately.
Conflicting answers.	But, Ms. Smith, Mrs. Brown just said, etc.	To show inconsistency in the investigation. This tactic is normally used on measurements, time, etc.	Remain calm. Conflicting statements have a tendency to make a witness extremely nervous. Be guarded in your answers on measurements, time, etc. Unless you have exact knowledge, use the term “approximately.” Refer to your notes.

Adapted from Brief Review of Common Tactics of Cross-Examination, Source unknown. Cited in Faller, J.N. Davidson, M.A. Martin, M.E. Morowitz, R.M. (1992) Working with the courts in child protection (Contract no. MIS-105-88-1702). Washington, DC., U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, National Center on Child Abuse and Neglect.

Activity B: Cross Examination

Directions:

1. Watch the video clip on cross-examination.
2. Make note of any strategies and tactics being used.
3. Be prepared to discuss.

Activity Notes:

[illegible]

Activity C: Skills Practice

Directions:

1. Write down any questions you may have for the Children's Legal Services representative.

Activity Notes:

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Supporting the Child Who Will Testify

CLS is responsible for preparing children who need to testify during a court hearing. If you get nervous thinking about having to testify in court, think about how it is for children. You have also learned how important it is to interview children in a way that elicits dependable information. When a child needs to be a witness, it is crucial that CLS prepare the child to testify and provide the child with information about the court and practice with them.

Your job is to support the task of preparing the child in several ways:

- Helping child stay calm. By the time the child needs to appear at a hearing, the Child Welfare Professional should have some ideas as to what helps the child stay calm during your interviews. Be sure to convey that information to CLS, and remind older children what you have noticed they do to remain calm. You should also convey to CLS any knowledge you have about known child triggers.
- Ask children ahead of time if they have any worries about being in the courtroom, including being asked questions in front of their parent(s). Be sure to share that information with CLS. If children are extremely fearful about being around a parent or that any person including their parent is trying to influence their testimony, be sure to convey that information to CLS as soon as possible so that alternatives can be considered or explored.
- You have conducted a language assessment of the child, and should share what you know with CLS. The child's unique words for family members, body parts; grasp of abstract concepts; and language use in general. This information will give CLS a running start to the task of preparing the child for testifying.
- Working with CLS as to practice times and logistics.
- Reinforcing the expectation that child is expert, not anyone asking child questions. It is helpful to remind children that what they have to say is important, and that no one else knows it as well as they do.

Final Note...

- Do not engage in off-the-record conversations.
- Do not discuss the case with opposing counsel.
- Do not engage in ex-parte communication with the judge.

- Tell CLS everything.
- Know your case.
- Attire.
- Demeanor.
- Know your case!

Treat every case like it is going to trial!

Preparing to Observe the Court Process in Action

- Know when and where Dependency Court proceedings occur in your area.
- Record your observations of the court proceedings.
- Prepare to have a classroom discussion about your court experiences.

Field Observation

Court Hearing Observed: _____

Date and Time of Proceeding: _____

1. The Participants

- a. Who was present for the hearing?
- b. Where did the Child Welfare Professional stand/sit during the hearing? Where did the other participants stand/sit?
- c. Did all participants show proper courtroom etiquette (including dress, behavior, etc.)?

2. The Hearing

- a. What information was shared during the hearing?
- b. What documents were used, reviewed, or discussed during the hearing?
- c. Was there any information that wasn't addressed or discussed that you think should have been?
 - Use the information you learned in module 4 about the different Dependency Hearings to help answer this question
- d. Did CLS and the Child Welfare Professional appear prepared for the hearing?
- e. If the hearing included testimony did the person testifying have good courtroom testimony skills? Did you notice any of the Cross-Examination Tactics being used?

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