

# Case Management

## Lab 1: Courtroom Testimony

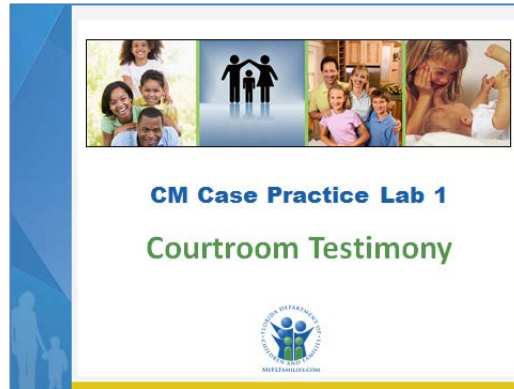


*Florida Department of Children and Families*  
*June 2016*

# Case Management

## Lab 1: Courtroom Testimony

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**Time:** 3 Hours

**Purpose:** This Lab prepares Child Welfare Professionals for the communication skills that are necessary to demonstrate in the courtroom. This lab includes preparation for testimony, responding to questions in appropriate ways, and understanding the strategies that parent's attorneys will use during cross-examination. This unit also discusses ways in which Child Welfare Professionals can support Children's Legal Services (CLS) as they prepare children for their testimony.

**Trainer Note:** *This unit should be co-trained by CLS and a person responsible for child welfare training. The CLS co-trainer should take the lead. Prior to attending this lab, participants should spend one hour of observation in the courtroom.*

- Materials:**
- Trainer's Guide (TG)
  - Participant's Guide (PG)
  - PowerPoint slide deck
  - Flip chart paper and markers
  - Additional Resource Materials (ARM): No ARM.
  - Videos:
    - Courtroom Etiquette:  
<https://www.youtube.com/watch?v=4IPnG1HMkBg>
    - The Devil's Advocate:  
<https://www.youtube.com/watch?v=GLNb1udBbsw>
  - Handouts needing to be printed: No handouts.

**References:****Links:**

- Florida Statute:  
<http://centerforchildwelfare.fmhi.usf.edu/flstat/FloridaStatues.shtml>
- Florida Administrative Code:  
<http://centerforchildwelfare.fmhi.usf.edu/HorizontalTab/FloridaAdminCode.shtml#>
- Operating Procedures/Practice Guidelines:  
<http://centerforchildwelfare.fmhi.usf.edu/HorizontalTab/DeptOperatingProcedures.shtml>

**References:**

- 39.01(51), F.S. –Definitions

**Activities:**

**Activity A:** Courtroom Etiquette - TG: 15, PG: 8

**Activity B:** Cross-Examination - TG: 25, PG: 16

**Activity C:** Skills Practice - TG: 28, PG: 17

**Credits:**

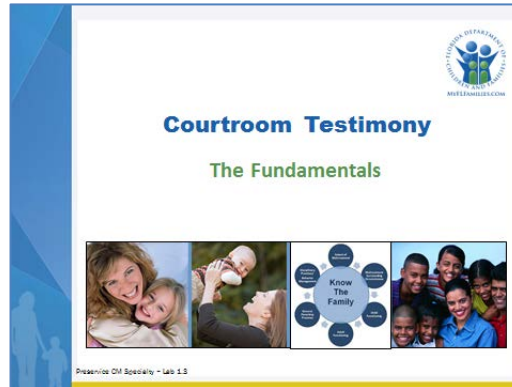
Much of the material in this course was adapted from ACTION for Child Protection training materials and articles.

**IMPORTANT**

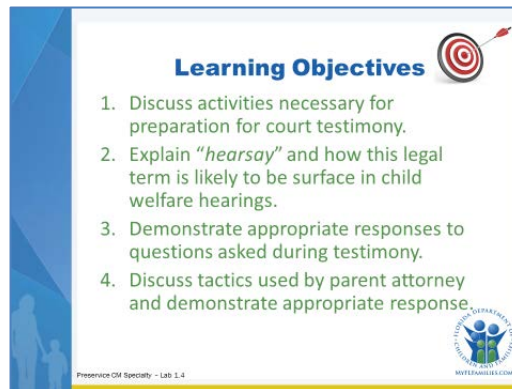
***Trainer Note:*** This module includes a field activity at the end where participants attend court to observe the court process in action. Before performing this field activity participants need to have completed Module 4 and Lab 1.

# Courtroom Testimony: The Fundamentals

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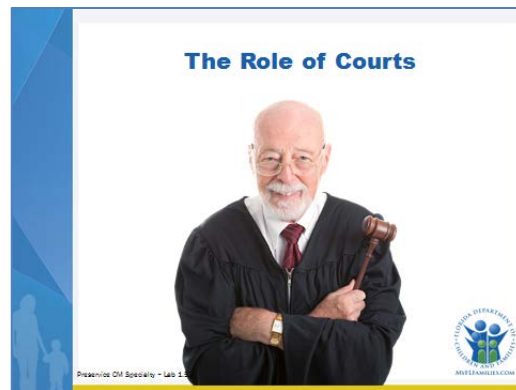


**Learning  
Objectives:**

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.

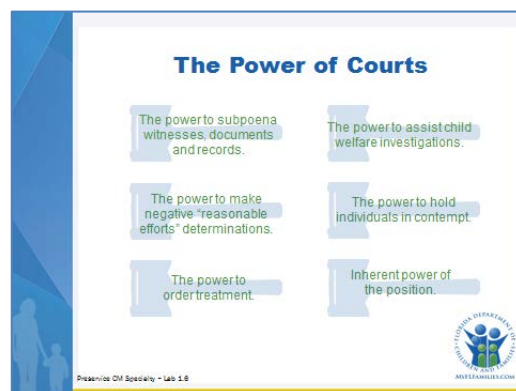
## Role of the Courts

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The courts play a central role in making decisions regarding the protection of children who have been maltreated. Understanding this process is crucial for any professional involved in child protection. By having a thorough knowledge of this legal process and by working in partnership with the courts, Children's Legal Services (CLS), Case Managers and other professionals will enable you to better work toward the safety, permanency, and well-being of children more effectively.

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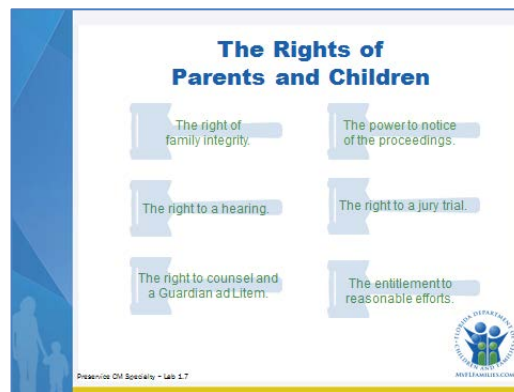


Courts and judges are often viewed as possessing enormous power and influence. Child Welfare Professionals who recognize and understand the powers of the court will find them advantageous to the resolution of their cases. These powers include:

- **Power to make negative “reasonable efforts” determinations.**  
“Reasonable” is a familiar term in the law, and determining what is reasonable is a familiar standard for judges. It is applied on a case-by-case basis to the particular needs of that child and family and the services necessary to meet those needs. A court can find that the agency has failed to make “reasonable efforts” to: avoid a child’s removal from the home, reunite a child with the family from which the child was removed, and secure an adoptive home or other permanent placement for a child.
- **Power to hold individuals in contempt.** There are two types of contempt, civil and criminal. Civil contempt is the willful failure to do something that a court has ordered, such as refusing to testify when the court has found that no privilege applies or refusing to pay child support when there are ample funds to do so. Criminal contempt can be indirect or direct. Indirect contempt is a willful violation of a court’s order. Examples of indirect contempt include a Case Manager’s refusal to arrange for a particular evaluation or a parent’s refusal to submit to paternity testing after a court order to do so. Indirect criminal contempt requires advanced notice of the specific charge and a full hearing. Direct contempt occurs in the presence of the judge and usually involves some disruptive or disrespectful behavior, such as uttering an epithet when the judge announces an unfavorable decision.
- **Power to order treatment.** Courts are authorized to order parents to participate in mental health or substance abuse treatment. The court has power to determine if the child should be removed from or returned to a parent, which may be conditioned on the parent’s participation in treatment.
- **Inherent power of the position.** One of the most significant judicial powers is not found in statutes or in case law, it is the power to gain the attention of others. Most of the professionals involved with child maltreatment respect the position and authority of the court and are responsive to judicial requests

or inquiries. When a judge calls a meeting to address a particular issue or invites stakeholders in a child abuse or neglect case to a meeting, they attend. This is the power “to get people to the table.” Of course, the outcome of such a meeting depends on the judge’s leadership skills and the extent to which the attendees are willing and able to communicate effectively and to collaborate in achieving system improvements.

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The court system affords both parents and children certain legal rights and entitlements, depending on the type of proceeding in which they are involved, including:

- The right to family integrity.
- The right to notice of the proceedings.
- The right to a hearing.
- The right to all information about their child.
- The right to counsel and a Guardian ad Litem.
- The entitlement to reasonable efforts.

Parents and children must not only be informed of their rights, but they also must understand the protections those rights afford them. The parents have the right to court appointed counsel and the children have the right to be appointed an Attorney ad Litem to educate them about their rights, represent them and help them feel empowered in an otherwise intimidating process.

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Child Welfare Professionals can enhance relationships with judges through improved awareness of courtroom rules, procedures, expectations, and the personalities of those involved.

Judges' expect that Child Welfare Professionals will successfully:

- 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 (i.e., dressing and acting professionally).
- Follow court orders.

## Children's Legal Services

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Children's Legal Services (CLS) is the law firm that represents the State (DCF) in abuse, neglect and dependency cases. You will be working closely with the CLS lawyers. CLS has the ability to assist in the following manner:

- **Power to subpoena witnesses.** A subpoena is a court order that directs a person to appear in court. Anyone who is properly served with a subpoena and who fails to appear as directed is subject to being held in contempt.
- **Power to subpoena documents and records.** CLS has the power to issue a *subpoena duces tecum* (which requires the release of specified documents or records, such as a hospital to provide records on a child's care or a Case Manager to produce a case file or notes on conversations).
- **Power to assist child welfare investigations.** CPI's can face seemingly insurmountable barriers in their investigations of suspected child maltreatment. For example, parents are under no legal obligation to allow the CPI to enter their homes to conduct an investigation. Obtaining formal documents and other information related to the alleged maltreatment, such as medical or school records are also difficult. To assist department in obtaining information necessary to investigations, CLS has the ability to seek a court order to allow a CPI to examine and to interview their children and to compel others who have information relevant to a child maltreatment investigation to make that information available for examination.

## Courtroom Presentation

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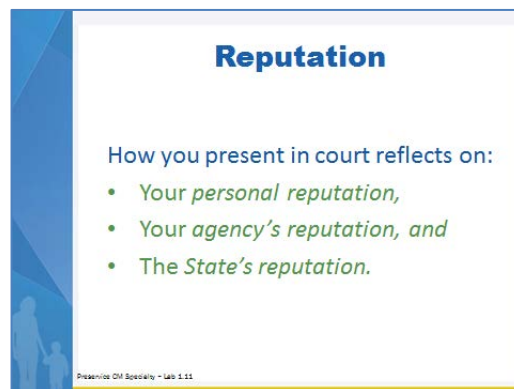
For those cases that need any court action, the ability to present information in the courtroom well is part of your job. You are a professional witness in the courtroom. While you need to know the basics of preparing for court testimony, and some knowledge of court rules and practices, your job is to be the expert on your case, and the information that is crucial to present in the proceeding.

The role of CLS is to help guide and support you prior to and during the hearing. CLS is the expert on the rules of courtroom proceedings, as well as the preferences of a local court and presiding judge. CLS will also guide the preparation of any written information that must be submitted to the court to ensure that it is sufficient from a legal perspective.

As you have learned in CORE, the child welfare system must provide reasonable efforts, and least intrusive actions with regard to families and individual family members. The case information you are the expert on will include your professional judgment, and how you arrived at a professional judgment, including why the actions being taken comport with reasonable efforts and least restrictive principles.

You are a professional witness. The court relies on you to provide information based on a higher level of expertise. Remember professionals are always prepared for court and act accordingly.

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As a professional witness, your personal reputation is at stake. When you show a strong command of the information you have gathered and assessed to support the judicial actions being requested, you are building your own professional reputation and credibility. The next time you appear in the courtroom, your professional reputation comes with you.

You are also representing your agency and the State of Florida.

***How many times do you think it takes to tarnish your reputation?***

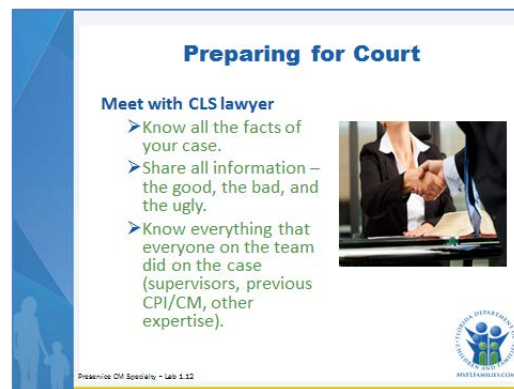
***Endorse:***

*Trainer should lead discussion to cover the following points:*

- It only takes one time to ruin your credibility.
- Studies show it takes 9-21 great impressions to overcome that one bad impression, especially if it is the first impression.
- Remember Judges and bailiffs talk, so leaving a bad impression with one judge could mean you have left a bad impression with all the judges.
- How do you want judges to think of you?

**Preparing for Court**

Display Slide 1.12 **(PG: 6)**



***Trainer Note:*** Point out that preparation is shown for each type of legal proceeding.

A part of preparing for court should be meeting with the CLS attorney assigned to the case. You want to share with the attorney all the specific information you have gathered, from what sources, and how you have come to your professional conclusions. Do not worry if it will come in as evidence. That is the lawyer's job. Tell CLS everything including what you think are hearsay statements. We will discuss this in more detail later.

If there are information gaps or discrepancies that you have not yet resolved, it is important to be forthcoming with the attorney. It is extremely important to be

factually accurate and not exaggerate. For example – you should not allow your personal feelings for a parent (whether you “like” them or not) impact the manner in which you provide information or how much is provided. Likewise, if there is information that has not yet been validated, is only based on parent self-report, that needs to be shared.

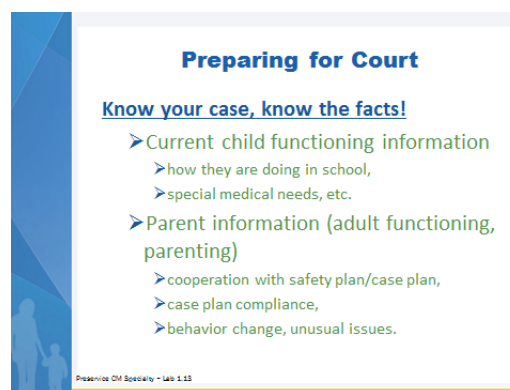
A part of sharing information about any case includes the source of all information gathered (Supervisor, previous CPI/CM, CPT, Family Intervention Specialist, treatment providers, other professional evaluations, etc.). Be prepared to discuss what other persons on the team did with regard to the case, and how that information has informed your assessment of the current situation.

If there is an evaluation that you have obtained on any of the family members that you feel is inaccurate, or if other persons on the team have arrived at conclusions that you disagree with, be sure to share your concerns with the CLS.

The purpose of meeting with the attorney before the hearing is to benefit both of you. The attorney learns what they need to know about the case so that they can prepare the best courtroom strategy. You need to learn what to expect and how you can prepare accordingly.

There is no need to be embarrassed or ashamed to ask the attorney any questions that you have about the case, the process, or the judge. Better to be embarrassed in your prep meeting, and not in the courtroom! If you have heard any “rumors” about the judge, or parent’s attorney, it’s best to be prepared and know what to expect rather than go into the courtroom worried.

Display Slide 1.13 (PG: 6)



During preparation for court testimony, you will present to the attorney all the information you have gathered in the FFA information domain areas. Case Managers have the additional expectation of being able to support the specific ratings that they have assigned to caregiver protective capacities and child strengths and needs. The FFA-Ongoing completed by the Case Manager will have more information and depth than the FFA-Investigations.

For cases that are still in the investigation stage, the attorney needs to know what the parent has demonstrated that the CPI associates with the parent's level of "cooperation." Any history that the CPI has reviewed that shows a pattern of cooperation, or not, should be shared.

It should be noted that "lack of compliance" with a past case plan is a symptom of a problem that may, or may not be, parent level of cooperation. It may be that the services in the plan were not an appropriate match to parent needs, or the services were difficult to access due to unresolved transportation or child care issues. When lack of past case plan compliance is evident to the CPI or the Case Manager, more information as to how that came about should be known and shared with the attorney.

Progress Updates and Judicial Reviews which are farther downstream in case management, require comprehensive and current information to support parent and child assessment ratings, family time, and progress with case plan compliance. All of these ratings were developed to ensure fairness and consistency across the child welfare system for children and parents. They must be supported with ample information that has been validated, and information that fully supports the rating.

Dependency judges are always concerned for the well-being of children, no matter what stage the case is in. How children are doing academically and whether they have any special needs warrants an informed answer by either the CPI or Case Manager. Information that is based only on the self-report of a parent, other caregiver or a foster parent is not sufficient. If a caregiver's self-report is all that the CPI and/or Case Manager has to go on at the time that should be shared with the attorney.

There will be times when you are not able to meet with CLS prior to a hearing or other type of judicial proceeding. (This should NEVER happen before a trial.)

***When this happens, how can you best prepare?***

**Trainer Note:** Trainer should make the following points:

- Review the entire file.
- Be prepared to answer questions about the case, the children and the parents' compliance.
- Summarize key dates and issues and be prepared to discuss them.

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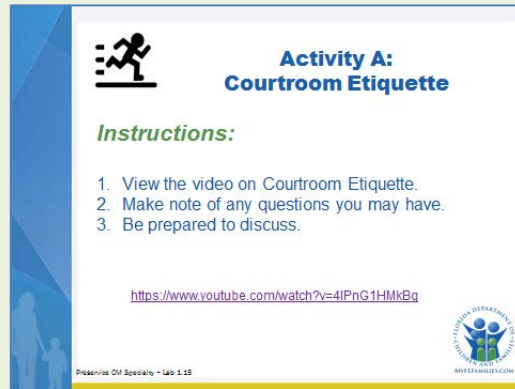


The best place to find decorum tips is in the local court's rules and administrative orders found on each circuit's website. Some common tips include:

- 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.

## Lab Activity A: Courtroom Etiquette

Display Slide 1.15 (PG: 8)



**Time:** 15-20 minutes

**Purpose:** To introduce to participants the importance of courtroom etiquette.

**Materials:** <https://www.youtube.com/watch?v=4IPnG1HMkBg>  
• PG: 8, Courtroom Etiquette worksheet

**Trainer Instructions:**

- Introduce the video which was produced by Utah Dependency Court Improvement program for child welfare professionals. Note that in Utah, all CLS functions are provided by the Attorney General's Office, and the Department of Children and Families is known as "DCFS."
- Show the 8-minute video.
- Debrief: Ask if there are any questions after participants have seen the video. Add the following points:
  - In some Florida Courts, all persons remain sitting.
  - In some Florida Courts, everyone sits around a table in a more informal setting.
  - In all but 3 Florida Circuits, Children's Legal Services represent the State of Florida.
  - In Circuits 13 and 17, CLS functions are provided by the OAG and in Circuit 6 they are provided by the State Attorney's Office.

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

## Activity STOP

Display Slide 1.16 and 1.17 (PG: 9)



**Let's discuss the topic of proper courtroom attire. Why does how you dress for court matter?**

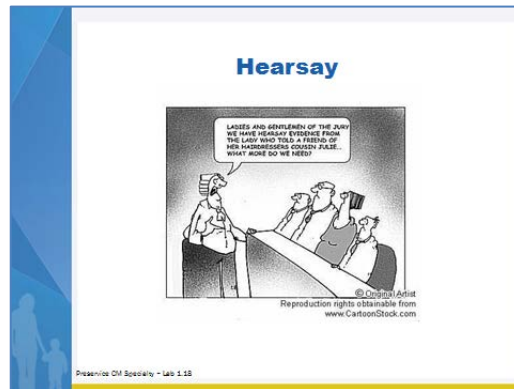
**Endorse:**

- It conveys respect for the family and the professionals in the courtroom
- Acknowledges the seriousness/gravity of situation
- Speaks to your credentials as a professional.

**Trainer Note:** Trainer should review the content on each slide for men and women, stressing that the dress code for a trial is more demanding than the dress code for a hearing or a judicial review.



Display Slide 1.18 (PG: 10)



We have all heard what “hearsay” is, haven’t we? It is not your job to worry about hearsay. That is CLS’ job. There are as many exceptions to the rule as there are nuances to it. A lawyer spends almost one-fourth of an evidence course on hearsay and how to get around the rule.

If CLS or the Judge asks you what was said, answer the question. Don’t hide the information because you do not think it is evidence. Let them decide.

Just to give you a few examples:

- Statements made by the parents will usually be admitted.
- Statements made by a child may be admitted.
- Statements regarding the person’s “state of mind” may be admitted.
- Statements made while the person was under the shock of the event may be admitted.
- Statements made for purposes of medical diagnosis may be admitted.

These are just a few. Are you starting to understand?

Display Slide 1.19 (PG: 11)



Many of the skills you learned in the Communications Lab are the same skills you want to bring to, and practice in the courtroom. Being genuine will serve you best, as that is the only way to convey through your demeanor and body language that you are being truthful.

Demonstrating respect of the proceedings in a courtroom by knowing what to do, and when, is one aspect of displaying courtesy.

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

***Endorse:***

- Controlling body language (facial expressions) when anyone says something you don't agree with (judge, parent's attorney, parent, or any other person testifying)
- Maintaining self-control and professionalism while testifying
- Greeting other team members, including the family
- Having eye contact with all persons present for hearing
- Affirming parent, other parties, for being present
- Use of cell phones for texting a message when essential may be permitted in that courtroom. Be sure to ask the attorney.

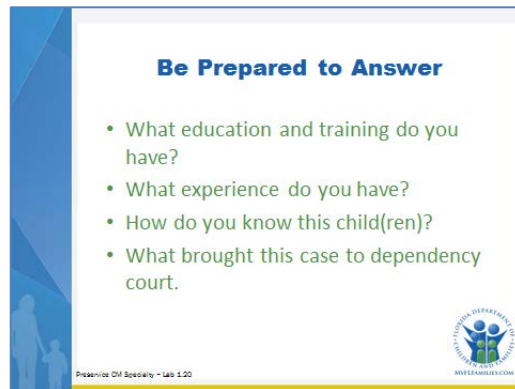
## ***How can the Child Welfare Professional show compassion in the courtroom?***

### ***Endorse:***

- Don't come across as judgmental of the family.
- Refrain from derogatory language about the parent, stick to the information about specific behaviors, conditions noted.
- Acknowledge parent concerns or love for their child.
- Acknowledge strengths that the parent does have.

The last two items on the “short list,” are to be complete and succinct, and are going to be the topic of much further discussion.

*Display Slide 1.20* **(PG: 11)**




*Trainer should review the four questions on the slide, explaining why they will be asked.*

- 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?

Display Slide 1.21 and 1.22 (PG: 12-13)

**Courtroom Testimony**


- “I do not remember” or “I do not know” may be valid answers in certain situations.
- If you need to refer to your notes it is ok.
  - May I review my notes or case file?
- Lawyer should ask if your recollection is refreshed. Do not read from the notes after you have reviewed unless you are asked to do so.



Pre-service CM Specialty - Lab 1.22

**Courtroom Testimony**

- Direct Examination- friendly?
- Cross Examination – not so friendly?
  - Defense
  - Judge




Pre-service CM Specialty - Lab 1.23

Display Slide 1.23, 1.24 and 1.25

**Courtroom Testimony**


- You have to answer all questions (except disclosure of reporter information).
- You have no right to refuse or object to a question, that is the attorney’s job.



Pre-service CM Specialty - Lab 1.23

**Courtroom Testimony**

- Avoid expressions such as:
  - “I assume”
  - “I guess”
  - “I suppose” or
  - “Maybe....”
- Avoid all efforts at conjecture or hypothesis



Pre-service CM Specialty - Lab 1.24

**Courtroom Testimony**

- Control your body language:
  - Temper
  - Demeanor
- Offer professional courtesy at all times.



Pre-service CM Specialty - Lab 1.25

**Trainer Note:** Trainer should review the following Guidelines for Effective testimony (PG: 12), highlighting in particular the points on the slides. The trainer should offer real examples of each point, to the extent possible from personal experience with real child welfare cases/hearings.

## 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.

**Trainer Note:** Review the different types of Cross-Examination Tactics with the participants. Explain that they need to be familiar with the tactics in order to complete the next activity.

**PG: 14-15**

## 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.

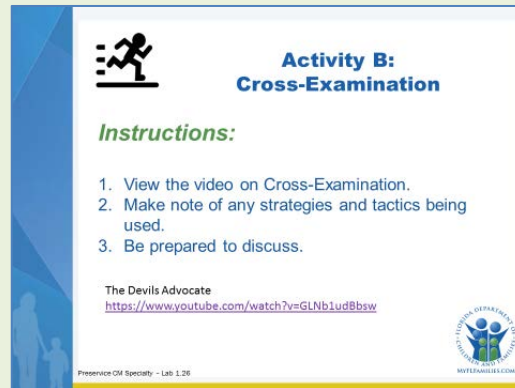
<b>Tactic</b>	<b>Example</b>	<b>Purpose</b>	<b>Response</b>
Demanding a “yes” or “no” answer to a question that needs explanation.	Did you open this case without seeing the child?	To prevent all pertinent and mitigating detail from being considered by the jury.	Explain the answer to the question. If 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.*



## Lab Activity B: Cross-Examination

Display Slide 1.26 **(PG: 16)**



**Time:** 25 minutes

**Purpose:** To provide an excellent, light-hearted transition to the topic of cross-examination.

**Materials:**

- ***PG: 16, Cross-Examination worksheet***
- ***PG: 14-15, Cross-Examination Tactics and Responses***

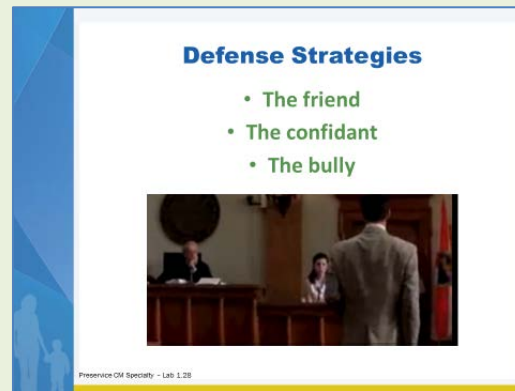
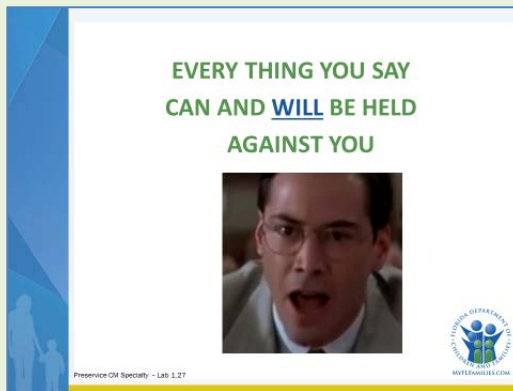
**Trainer Instructions:**

- *Show participants the short video clip from the movie “The Devil’s Advocate” in a scene where the victim is being cross-examined.*
- *The Devil’s Advocate*  
<https://www.youtube.com/watch?v=GLNb1udBbsw>

**Activity Instructions:**

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

Display Slides 1.27 and 1.28



**Trainer Note:** Participants should be able to relate many of the tactics to the common interviewing challenges that they have been taught not to do, such as asking compound questions, double negative questions, leading questions, and questions with “absolutes.”

**Trainer Note:** This list is not exhaustive, and participants may identify other tactics on this list that do not have answers. If participants find other answers the trainer can determine if it is actually an appropriate answer.

### Cross-Examination Tactics

Tactic	Example	Purpose	Response
Rapid fire questions. <b>This is demonstrated when he asks “This is your handwriting isn’t it? You wrote this in Mr. Getty’s class right?”</b>	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. <b>This is demonstrated when he says “I’m sorry Barbara, I was wrong...it’s disgusting pig beast.”</b>	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. <b>This is demonstrated when he is asking about the game Special Places and starts shouting, and also towards the end when he starts to get in the witnesses’ face about the children at the party, and why she “made up” the story.</b>	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.

## Cross-Examination Tactics

Tactic	Example	Purpose	Response
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 the 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). <b>This is demonstrated several times, (ex., when he asks "Isn't it true Mr. Getty has had to repeatedly talk to you about your behavior..."</b>	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 on the facts; disregard the suggestion. Answer the question.
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	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.

Cross-Examination Tactics			
Tactic	Example	Purpose	Response
	inside.”		
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.

## Activity STOP

### Lab Activity C: Skills Practice

Display Slide 1.29 (PG: 17)

**Activity C:  
Skills Practice**

**Instructions:**

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

Pre-service Case Management - Lab 1.29

ILLINOIS DEPARTMENT OF CHILDREN & FAMILY SERVICES  
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**Time:** 30 – 60 minutes

**Purpose:** For participants to have the opportunity to talk to someone from CLS regarding expectations in the court room.

**Materials:** • **PG: 17, Skills Practice worksheet**

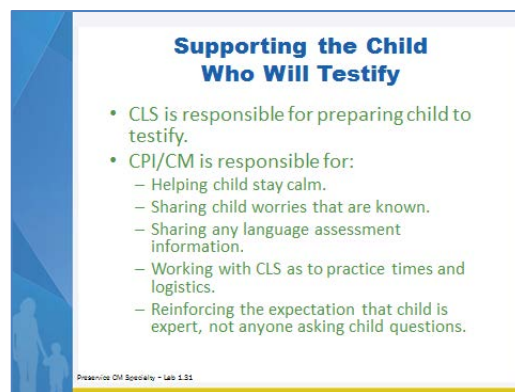
**Trainer Instructions:** • *Ask CLS to discuss with participants the most common types of questions that Child Welfare Professionals should expect in the courtroom, both from CLS and the parent's attorney. Some of the questions might be rhetorical, some might be "What would you say if the parent's attorney asked you..."*

• *This is an important opportunity to share any areas of special interest.*

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

## Activity STOP

Display Slide 1.30 **(PG: 18)**



### 39.01(51), F.S. –Definitions

Section 39.01(51) defines the child as a party to the dependency case. Since the child is a party, the child has a right to attend every hearing and should be notified of all future court proceedings. Rule 8.255(b)(1). Section 39.01(51) further states that "(t)he presence of the child may be excused by order of the court when presence would not be in the child's best interest. Notice to the child may be excused by order of the court when the age, capacity, or other condition of the child is such that notice would be meaningless or detrimental to the child."

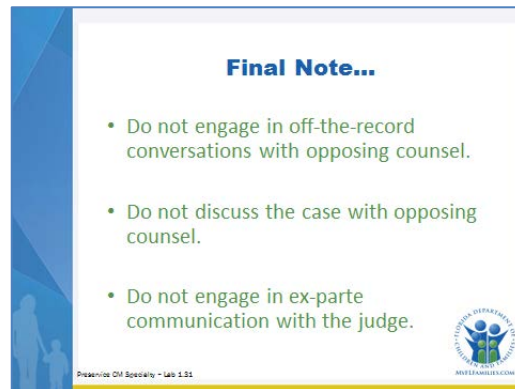
**PG: 18**

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.

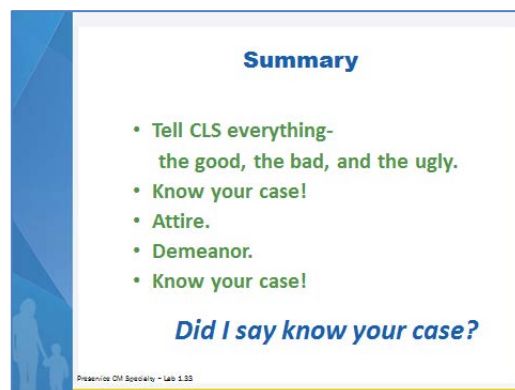
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**Trainer Note:** Trainer should review what each of these points mean to the Child Welfare Professional:

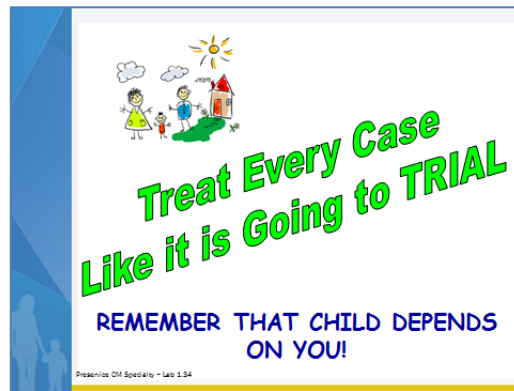
- Do not engage in off-the-record conversations.
- Do not discuss the case with opposing counsel.
- Do not engage in ex-parte communication with the judge.

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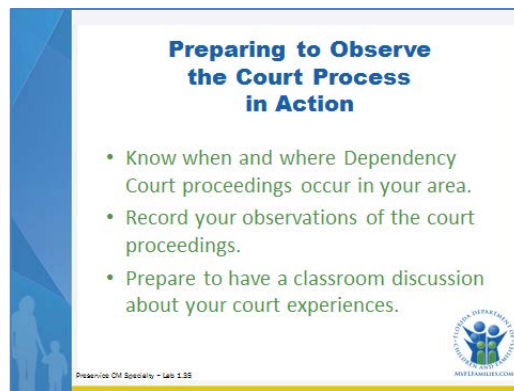
**Trainer Note:** Trainer should summarize the major training points. Ask for any questions or concerns that need to be addressed.

Display Slide 1.33



**Trainer Note:** Wrap-up the training by stating that every case should be treated as though it is going to trial. Even after years of practice and dozens/hundreds of trials, one cannot predict which cases will go to trial. CLS is always here to help you navigate the court process. We know what a difficult job you have to do and want your court experience to be as stress-free as possible.

Display Slide 1.34



**Trainer Note:** Be sure to inform participants where and when dependency court proceedings occur in your area. Spend a few minutes reviewing the observation sheet in their participant guide. This observation sheet is similar to the observation sheets used in CORE, but has been changed to fit the court process.

As you observe dependency court proceedings, you will be recording your observations. Worksheets for recording your observations are on **PG: 20-22**; there are worksheets provided for observing up to three different proceedings.



## 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?

**Debrief:** After participants complete the field activity discuss their courtroom experiencing using their completed observation forms as a guide for the discussion.