

Being the Best Witness

Peggy Walker, Judge
Juvenile Court of Douglas County

Trial

- Pieces of a puzzle are the evidence in the form of testimony and exhibits
- The directions are the statutes and case law
- The attorneys put the pieces together through direct and cross examination using the law as the framework
- They outline what the evidence will show in opening statements

Trial

- In closing statements they point to how the pieces fit together according to the law
- To tell the story, your goal as a witness is clear, concise testimony to make the pieces tell a coherent story
- The fact finder (Judge in Juvenile Court, Judge or Jury in State and Superior Court) will decide how the pieces fit in accordance with the law.

Getting Started

- Dress for success
- Conduct yourself as a professional at all times
- Be polite
- Careful of what you discuss, where you conduct discussions and with whom you are speaking

Getting Started

- Whatever you say including jokes will be overheard by someone and may be used against you later
- Do not chew gum or use tobacco products
- Do not leave the waiting area without informing the attorney and bailiff of your location
- Put pagers, radios and phone on **SILENT**

Getting Started (JPD Version)

- No heavy cologne or perfume
- Keep the jewelry simple
- Remove body piercing
- Cover tattoos
- No hats

Answering Questions

- On direct listen to the question and answer that question in plain English without any jargon so that any person can understand
- On cross answer the question first then you may explain your answer
- Keep your answers factual
- When asked for your opinion give it in the context of your professional training so that it does not come across as biased

Testifying

- **BE PREPARED**
- Talk to the attorney prior to trial about your testimony and any problems with the case
- Plan for cross examination
- Be patient
- Be accurate
- Do not volunteer information
- Do not stall

Testifying

- Do not be too quick to answer. Wait for the question to be finished. If there is an objection, wait for the ruling and instructions to answer if appropriate to do so. Do not get involved in the discussion regarding the objection. Do not show any reaction to the ruling.
- Do not be too slow to answer. If you do not understand the question, say so.
- Do not hedge or qualify your answer

Testifying

- If you do not know the answer, say so.
- Do not argue with or get angry at counsel.
- Modulate your voice.
- Listen with care to wording and multi part questions to avoid the trick or confusing question.
- Speak with confidence because you have the training, experience and are the expert on the witness stand.

Testifying (JPD Version)

- Do not ask the attorneys questions
- If you do not know the answer to a question, do not be afraid to say, “I don’t know.” Just because a question is asked, does not mean that you have to answer it if you do not know the answer.

The Art of Telling a Story

- ABA Child Law Practice, Vol. 25, No. 5, July, 2006, p. 80, using James W. McElhaney’s book, McElhaney’s Trial Notebook for tips

Tips

- Believe what you say
- Create a sense of reliability (Make it real)
- Make your audience identify with you
- Show – don't tell
- Use pictures to create understanding with words and illustrations

Assisting the Attorney

- Provide your attorney with a list of witness names, telephone numbers, addresses and summary of what the witness knows
- Prepare the attorney with any accusations previously made or any threats or other information relevant to the case
- Know the status of related actions in other courts including bond limitations, sentences imposed, conditions of release

Detention Hearing

- Identify the issues leading to removal
- State why it is not safe for the child to be in the home
- Explain prior services and efforts to avoid removal to show reasonable efforts were made
- Provide all information on relatives or significant adults in the life of the child to explore all possible placements

Detention Hearing

- Informal
- Hearsay is admissible
- Standard of proof is probable cause
- Parties may be more receptive and open than in subsequent hearings
- Include suggestions for addressing the issues to orient the parents, counsel and the Court of what you will seek as part of a case plan if the Court detains the child

Adjudicatory Hearing

- Evidentiary hearing so stick to the facts and nothing but the facts
- Standard of proof is clear and convincing evidence
- Hearsay is admissible only if it falls within the exceptions such as admissions, res gestae, business records, etc.

Disposition

- Create a road map for return of the children
- Limit goals to causes of removal
- Create steps that are clear and measurable
- State who will do what, when and where
- Include phone numbers, addresses and contact persons for referral to community resources and providers
- Hearsay is admissible

Disposition (JPD Version)

- Set priorities in the case plan
- Do not overwhelm the client with a huge to do list

Review

- State what has been completed
- State what remains to be done
- State why any goals and steps were not completed
- State efforts made to provide services
- State obstacles to completion of any goals and steps
- Include frequency and quality of visits or other involvement with the child or children

Review

- What is the present status of the child
- Changes in placement
- Reason for changes
- Educational status including credits earned for high schools students, disciplinary issues, special education services
- Services received – psychological, medical, dental
- Needs to be addressed

Permanency Hearing

- Has permanency been achieved?
- If not, why not?
- Were reasonable efforts made to achieve permanency?
- Is there a concurrent plan?
- How and when will permanency be achieved?
- When will the order expire?
- Who will take action and when to address expiration?