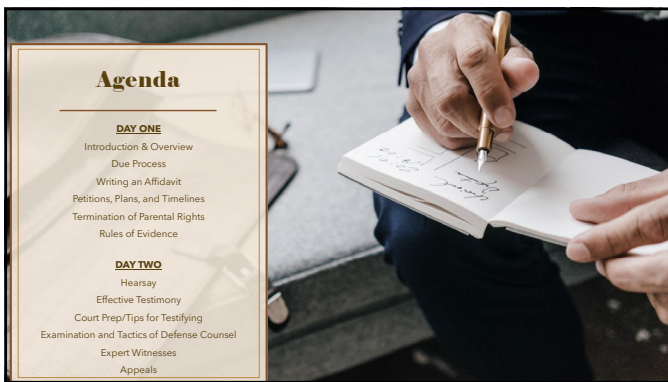
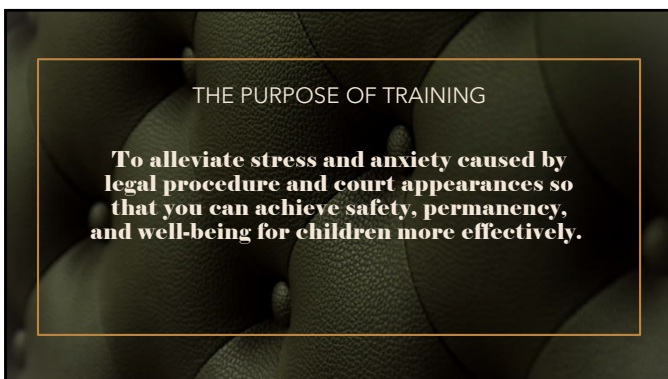




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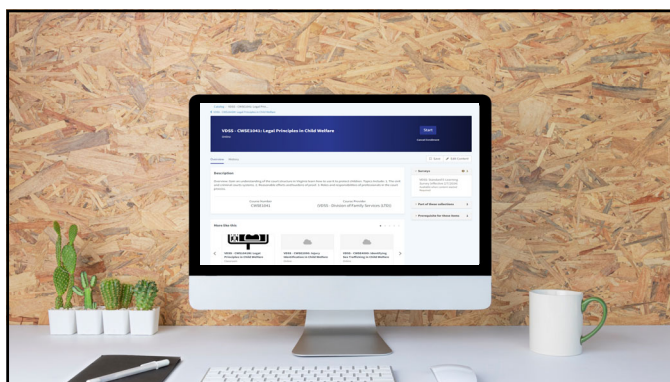


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AFTER THIS TRAINING, YOU WILL:

- Understand the legal requirements of a child welfare case
- Appreciate the roles and responsibilities of other professionals in the system
- Be prepared for court
- Know how to present your case to the judge with confidence

4



5

Many FSSs feel anxious and ill-prepared for court.

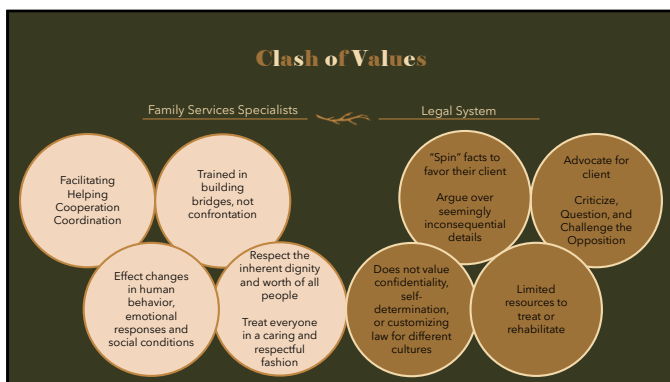
No.1	Court proceedings can be confusing and intimidating.
No.2	Need to understand court processes, roles of court personnel, complex legal jargon, and the court's expectations of you.
No.3	Need to be competent in navigating juvenile court process to achieve positive outcomes for children and families.

6



Why do so many Family Services Specialists dislike going to court?

7



8

Key Observations

1. DSS case is not "lost" in court - it is lost **before** court begins.
2. Reasonable people (FSS, CASA, GAL, Judge, etc) can disagree about what is best for the child.
3. Attorneys representing parents don't have to be reasonable.
4. Judges may err on the side of caution.

9

"No state can deprive any person of life, liberty or property without due process of law."

-14th Amendment of the United States Constitution



10



The parent-child relationship is a constitutionally protected liberty interest.

11



"No bond is more precious, and none should be more zealously protected by the law, as the bond between parent and child."

Carson v. Elrod, 411 F Supp 645, 649; DC E.D. VA (1976)

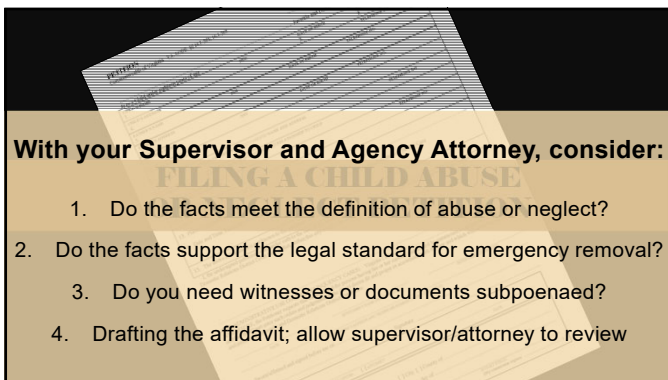
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Due Process Rights Guaranteed to Parents & Children:

- Notice of the proceedings
- Right to hearing
- Right to cross examine evidence
- Parent's right to an attorney
- Child has right to GAL
- Right to appeal



13



With your Supervisor and Agency Attorney, consider:

1. Do the facts meet the definition of abuse or neglect?
2. Do the facts support the legal standard for emergency removal?
3. Do you need witnesses or documents subpoenaed?
4. Drafting the affidavit; allow supervisor/attorney to review


14



Writing an Effective Affidavit

1. **Rule of PRIMACY:** What we read or hear *FIRST* affects everything we hear *AFTER*.
2. Your affidavit is what the Judge reads first. Remember that the Judge knows nothing about the case. Start far enough back with the facts to **set up the context** in which the emergency arises.
3. Use the affidavit as an **outline of your testimony**; make sure you can prove allegations.

15




Writing an Effective Affidavit

4. Write in first person.
 i.e.: "I spoke to Ms. Smith";
 NOT: "Worker spoke with Ms. Smith"

5. Use commas properly!
 i.e.: "How to cook crack and clean crab."
 Versus: "How to cook, crack, and clean crab."
 i.e.: "Let's eat Grandma."
 Versus: "Let's eat, Grandma."

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Writing an Effective Affidavit

6. Write in complete sentences. Proof your work for typos and grammar. Sloppy writing reflects sloppy casework.

7. Identify the cast of characters and the relationships in the first couple of paragraphs.

8. Lay the facts out logically and sequentially. Don't jump around in time.

Give exact dates of significant activity to give a sense of how quickly or slowly people acted.

17



Writing an Effective Affidavit


9. Avoid conclusions like "the house was filthy" and "Ms. Jones was agitated"

Instead, describe what you observed, heard, smelled, etc.:

i.e.: "Roaches were crawling on the walls, bags of garbage were strewn across the floor, and the house smelled like cat urine. Mrs. Jones was screaming and cursing unintelligibly and twirling the cat in circles by its tail."

Be as descriptive as possible!

18




Writing an Effective Affidavit

10. **Avoid legal conclusions** like “child is abused”; state facts that support conclusion.

11. Explain the **reasonable efforts** you have made with the family prior to filing a petition in order to protect the child.

12. Explain why less drastic alternatives aren’t available.

19



Writing an Effective Affidavit

13. If you took custody more than **4 hours** prior, state why you couldn’t file petition before then. i.e.: “court was closed”

14. Tell the court what you’re asking for (ex: removal or protective order)

20

What can you ask for in a Protective Order?

- 1 Cooperation with Services
- 2 Home Visits
- 3 Visitation with the Child
- 4 Subject Refrained from Certain Acts
- 5 Limit Abuser’s Contact with the Child

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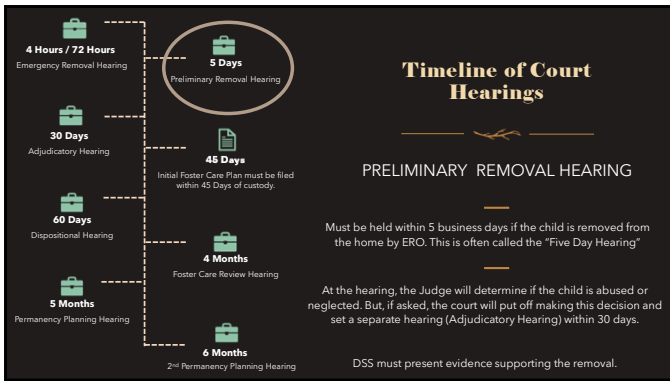
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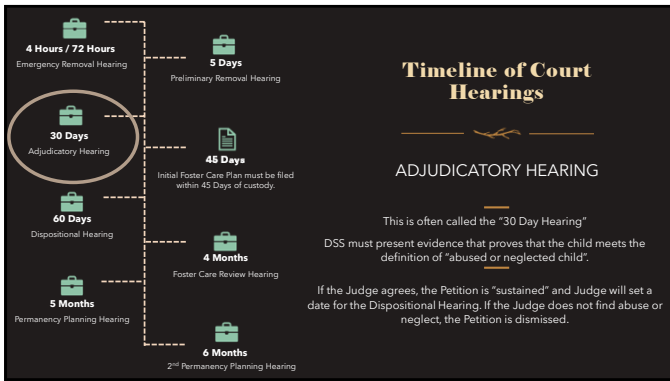


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PRO Hearing

Both parents were here today. They got a copy of the affidavit that I wrote. The judge appointed attorneys for mom and dad. Mom's attorney asked for more time to prepare. So, the Judge set the next court date for 3 weeks from today. I need to schedule a meeting with my agency's attorney to prepare for that next hearing!

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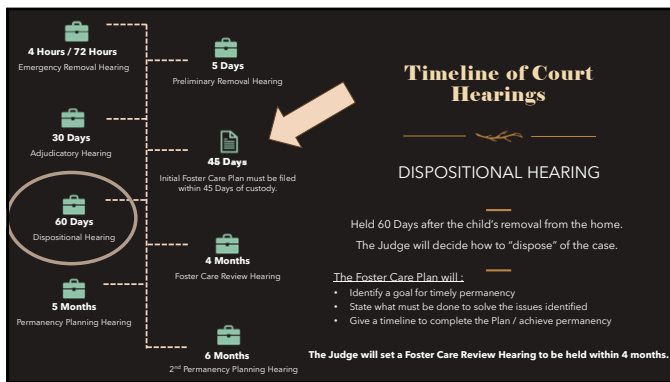
Adjudicatory Hearing

Wow! Today was the trial! We had the neighbor and teacher here at court to testify. I also testified about what I saw. We submitted the photos I took as evidence. The parents also brought in some witnesses.


I was nervous about how it would turn out! The Judge adjudicated that the children were abused. So, they are going to stay in foster care. There's another hearing scheduled for next month. I need to submit a foster care plan soon!



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Dispositional Hearing

This hearing felt like a turning point... We're no longer hashing out what happened in the past. Instead, we're focused on how to proceed for the future!


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
Effective Foster Care Plans


No. 1	Recommended services match identified needs.
No. 2	Clearly identifying responsibilities of parent, agency, child, and others.
No. 3	Require observable and demonstrated change in behaviour versus "attend parenting classes"


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**4 Hours / 72 Hours**
Emergency Removal Hearing


**30 Days**
Adjudicatory Hearing


**60 Days**
Dispositional Hearing

**5 Months**
Permanency Planning Hearing

**5 Days**
Preliminary Removal Hearing

**45 Days**
Initial Foster Care Plan must be filed within 45 Days of custody.

**4 Months**
Foster Care Review Hearing

**6 Months**
2nd Permanency Planning Hearing


Timeline of Court Hearings


FOSTER CARE REVIEW HEARING


Held within 4 Months of the Dispositional Hearing
Determines whether the parents are doing what the Foster Care Plan required of them.
Is DSS making reasonable efforts to achieve the goal?
Plan may be amended in court.
The Judge sets the Permanency Planning Hearing to be held within 5 months to see if the goal has been achieved.


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**4 Hours / 72 Hours**
Emergency Removal Hearing


**30 Days**
Adjudicatory Hearing


**60 Days**
Dispositional Hearing

**5 Months**
Permanency Planning Hearing

**5 Days**
Preliminary Removal Hearing

**45 Days**
Initial Foster Care Plan must be filed within 45 Days of custody.

**4 Months**
Foster Care Review Hearing

**6 Months**
2nd Permanency Planning Hearing

Timeline of Court Hearings

PERMANENCY PLANNING HEARING

The Judge must decide whether or not the Plan goal has been achieved
OR
Set a Second Permanency Planning Hearing if more time is needed (6 Months Max)
OR
Approve a new permanent goal
DSS must prove that it has made reasonable efforts to achieve permanency.

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Mandated "IV-E" Findings for Foster Children

No. 1	Remaining in home is <u>contrary to best interests</u> of the child. Must be made in first court order authorizing removal.
No. 2	DSS made <u>reasonable efforts</u> to prevent removal. Must be made within 60 days of removal.
No. 3	DSS is making <u>reasonable efforts</u> to reunite or establish permanency. Must be made annually but must review child's status every 6 months.

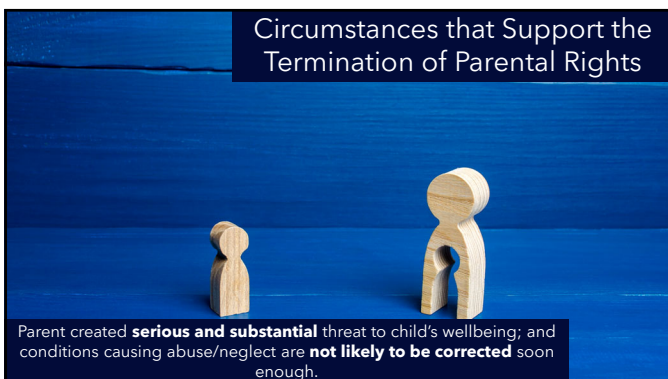
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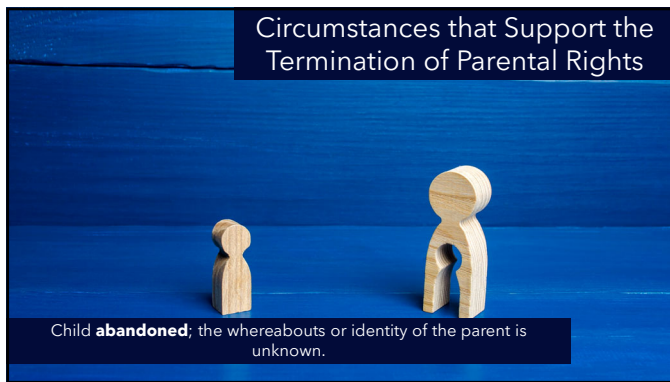
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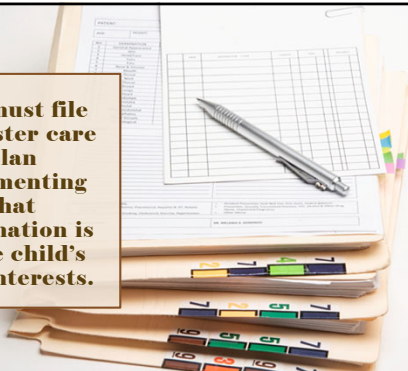
Circumstances that Support the Termination of Parental Rights



Child has been in foster care for **15 of most recent 22 months**, unless documented why TPR is not in the child's best interest.

46

You must file the foster care plan documenting that termination is in the child's best interests.



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Special Issues with TPR

Child 14 years old and older, or otherwise of an age of discretion, can **object** unless evidence proves that disability of the child reduces child's developmental age and child is not otherwise of an age of discretion.

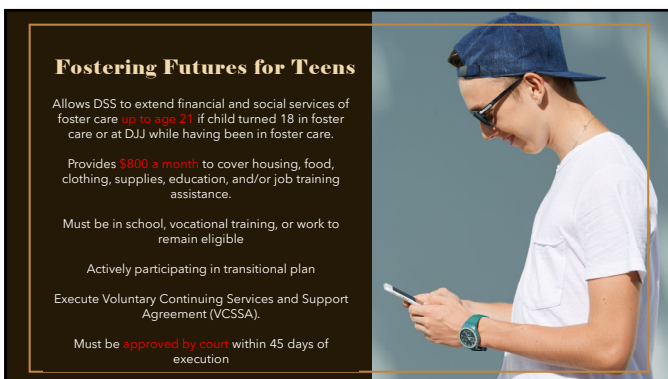
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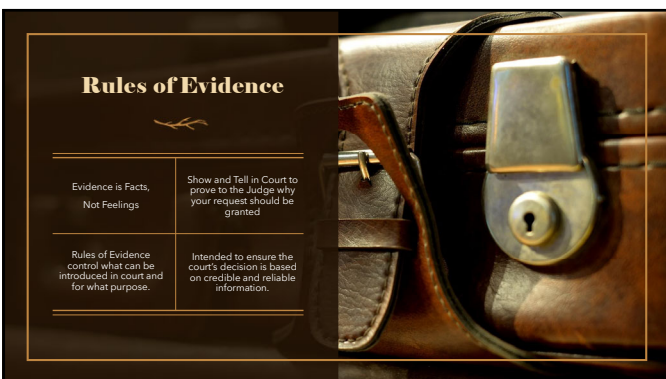
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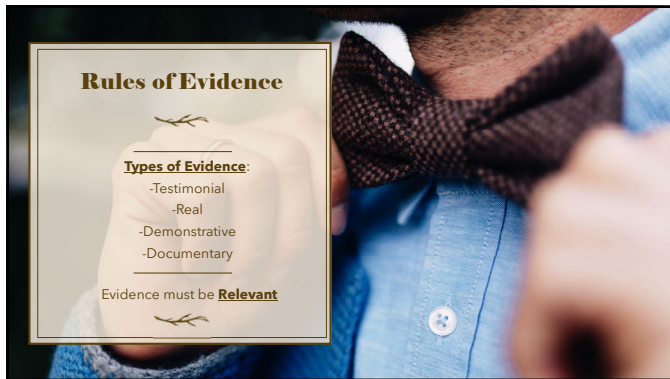
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Rules of Evidence

Types of Evidence:

- Testimonial
- Real
- Demonstrative
- Documentary

Evidence must be **Relevant**

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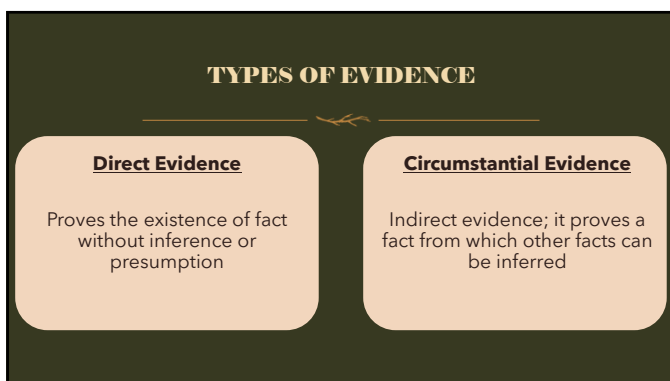


A Witness Must:

1. Be present
2. Swear to tell the truth
3. Be subject to cross-examination

The Judge must be able to see the witness in order to test credibility and reliability of testimony.

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TYPES OF EVIDENCE

Direct Evidence

Proves the existence of fact without inference or presumption

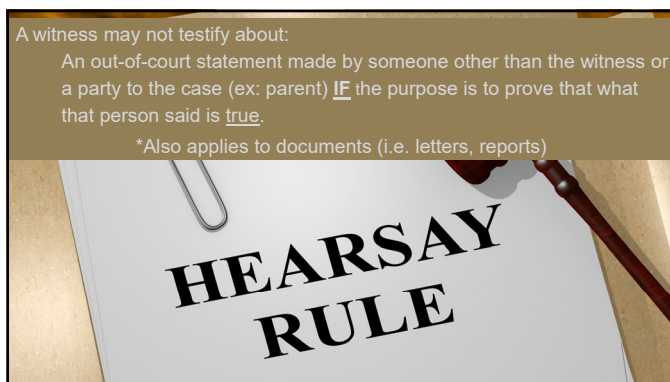
Circumstantial Evidence

Indirect evidence; it proves a fact from which other facts can be inferred

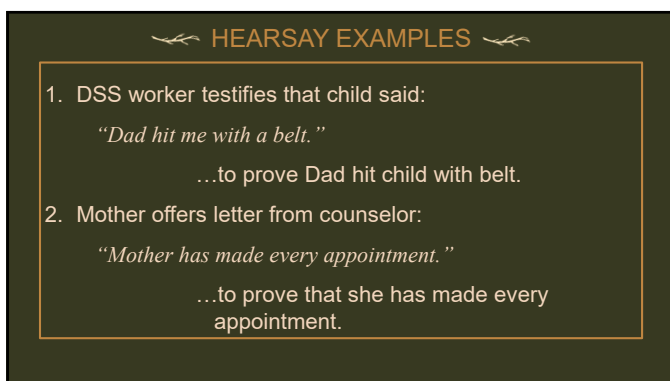
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NOT HEARSAY

1. FSS describes how child reacts around parent:
"The child started crying and ran toward me when the mother entered the room."
...to prove that child is scared of mother.

2. FSS testifies that 4- year- old child said:
"Daddy's pee-pee was hard and white stuff came out that tasted bad."
...not to prove truth of statement, but rather to prove that child has unusual sexual knowledge for age.

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EXCEPTIONS TO THE HEARSAY RULE:

1
Admissions by Parties listed on the Petition (such as the parents)

2
Regularly kept business or official records, if properly authenticated/ certified
DSS Records, School Attendance Records, Police Records, Medical Records

3
State of mind of the child

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65



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Pay Attention To How You Present:

- Dress Professionally
- Don't Slouch
- Don't Fidget
- Don't Cross Your Arms
- Don't Roll Your Eyes

67

Pay Attention To How You Present:

- Understand the Purpose of the Hearing
- Take Time to Prepare
- Be Familiar with the Facts and the Case File
- Discuss Particulars (especially troublesome aspects) with Agency Attorney
- Discuss Anticipated Cross-Examination Questions

68

Pay Attention To How You Present:

- Identify Key Points or Facts that Need Emphasis
- Outline History of Case with Key Dates and Events
- Summarize Services Offered to Child & Family; Response & Outcome
- Talk with Previous Case Workers about Involvement with Family or Child
- Show Up Early and Never Be Late

69

Pay Attention To How You Present:

- Own the Agency's Position,
Even if You Disagree
- Don't Take Questions Personally
- Don't Be Defensive
- If You Don't Remember, Say So
(Ask to Refer to Notes)
- Don't Take Your File; It Could Be Examined

70

Pay Attention To How You Present:

- Never Guess
If You Don't Know, Say So
- If You Don't Understand the Question, Say So
Ask for Question to be Repeated/Rephrased
- Take Your Time
Give Each Question Enough Thought
Be Sure You Understand First
- Answer Only the Question Asked
Don't Volunteer Information
- Answer Question Entirely
"Yes, but..." or "No, but..."

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Pay Attention To How You Present:

- Speak Up
Don't Nod Your Head- Say "Yes" or "No"
- Look at the Judge
This is Who You Are Trying to Persuade
- Don't Look at Your Lawyer
- If an Objection is Made, Do Not Answer
Until the Judge has Ruled on the Objection
- Listen to Arguments on Objection
You will Learn What the Problem Is

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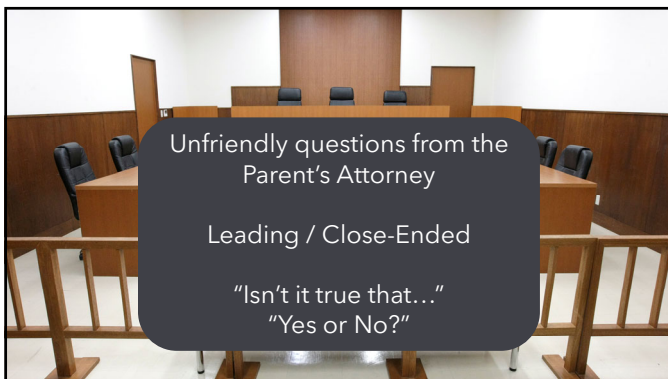
Pay Attention To How You Present:

- Never Lose Your Temper
Remain Calm and Professional
- Be Courteous and Don't Make Jokes
Answer "Yes Sir/Ma'am"
Address the Judge as "Your Honor"
- Display No Emotion, Especially Anger
if Judge Makes Decision You Disagree With
- Tell the Truth, Even If it Hurts
Your Credibility and Integrity is Vital
- Admit Mistakes

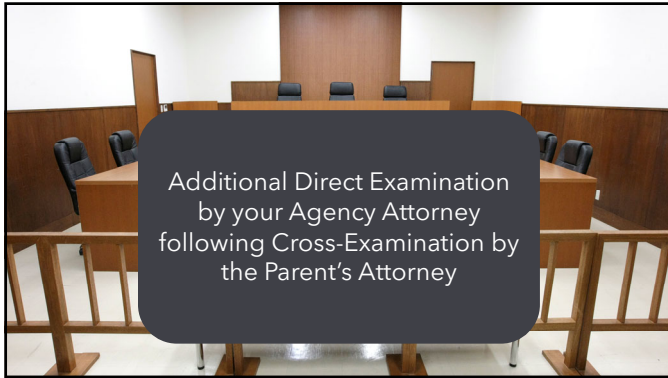
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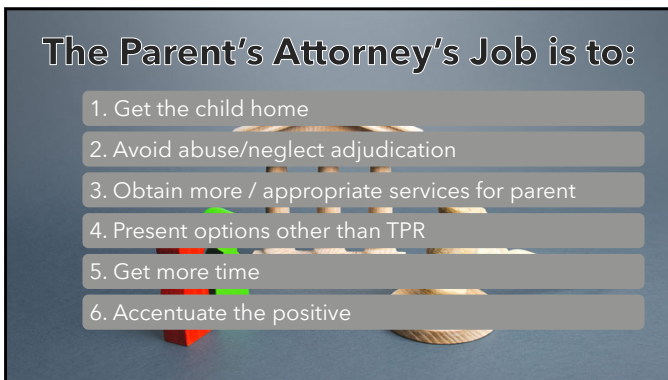
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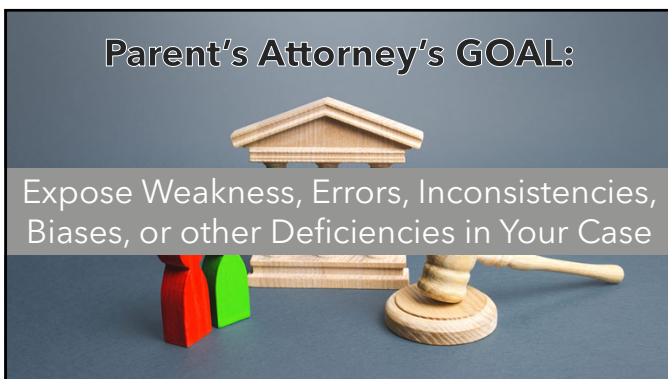
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Tactics Used by Parent’s Attorney

- Your CPS investigation was rushed and not thorough
 - You ignored less drastic alternatives to removal
 - You misinterpreted the facts
- Your service plan is inadequate to meet the family’s needs
- You favor the mother over the father – not giving him a chance
- You have not fulfilled your responsibilities under the plan

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EXPERT

WITNESS

Possess special experience, training, or education
 - Can help Judge understand the issue
 - Allowed to offer *opinion* as opposed to fact

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QUALIFYING AS AN EXPERT WITNESS

1.Education

2.Licensure

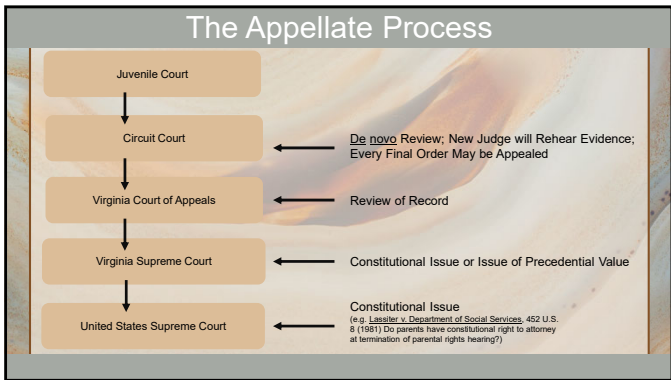
3.Work Experience

4.Training

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Your Feedback Matters!






- Please complete the **survey** by clicking the link in the chat box.
- Provide detailed information about what was effective, and what was not.
- Surveys are **ANONYMOUS** so feel free to be candid
- Your feedback is appreciated & will help us to improve & enhance our training

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Thank you

CWS1041W

Transfer of Learning can be accessed on the FUSION page.
Please complete this with your supervisor.

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