

Handouts for the Webinar

Building a Foundation for Success in Court

Strengthening Teamwork between DSS Attorneys and Child Welfare Professionals

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Contents

Reporting to the Court: A Guide for Social Workers	2
• Core Principles.....	2
• How to Testify	2
• Legal Writing Tips	5
• Appendices	13
Worksheet: Handling Court-Related Responsibilities	18
References.....	19
Resources for Learning More	19
Webinar Slides.....	20

REPORTING TO THE : A GUIDE FOR SOCIAL WORKERS

This document is part of a training developed by Alice Espenshade, JD, for Beaufort County DSS

Core Principles:

1. Each natural parent of a child has a liberty interest in the care, custody and control of that child.
2. As between the two parents, this liberty interest is equal, until defined otherwise by a court of competent jurisdiction.
3. The Fourteenth Amendment states that: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ***nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.***”
4. Virtually everything a child protection social worker does is “state action”, implicating the Fourteenth Amendment.
5. Due process consists of two elements: procedural due process and fundamental fairness. ***Procedural due process, at a minimum equals notice and an opportunity to be heard.***
6. Equal protection of the law means treating similarly situated people the same, and affording reasonable accommodations for disabilities.
 - a. Difficult people have rights, too.
 - b. One size does not fit all.
7. When you are acting on behalf of the government, ***appearing*** fair is just as important as ***being*** fair.
8. Be, and appear to be, a confident, knowledgeable professional, acting in accordance with the law, and providing dignity and fairness to all with whom you interact.

How to Testify:

1. Sit still, listen carefully, and answer clearly. Don't touch the microphone. Project calmness, seriousness, and attention to the proceedings.
2. Wait for the whole question to be asked before you begin to answer it. If a lawyer objects to a question, do not answer it until the judge tells you that you can. If you

have begun answering a question and a lawyer says, “Objection”, stop and wait until the judge tells you to continue.

3. Do not become angry or defensive if someone questions your credentials. State them plainly, and do not exaggerate or embellish your expertise.
4. If you don't understand the question, say “I don't understand the question.” Avoid any response that might suggest to the judge that you are wary or defensive in any way. For example, if you say, “What are you getting at?” the defense counsel will snap back, “Never mind what I'm getting at, just answer the question!” If the defense attorney gets snotty with you when you say you don't understand, making comments like, “I thought I was using plain enough English” say nothing in response. The Judge will direct the defense attorney to rephrase the question.
5. If you don't remember, say “I don't remember” and nothing more. Do not become defensive about not recalling detailed information. The judge is already keenly aware of how long ago things happened. Witnesses that remember too well are looked upon with suspicion. By acknowledging when you don't remember, you demonstrate professionalism and a desire to be strictly accurate in your testimony. Chances are, the attorney asking the question will ask if you have any means of refreshing your recollection. This is when you go to your file. Identify the portion of the record you are looking at (investigative summary, etc.) as narrowly as possible. Find the dictation related to the question, and tell the questioning attorney, “I have found a note made by myself on X date related to that conversation (or event).” Then read the notation.
6. If you are asked a compound question (i.e.” Isn't it true that you hate the defendant, that you made up your mind long before you had any evidence he was guilty, and you ordered his wife to keep him away from the children?”) you should first wait a second or two for the opposing counsel to make an objection as to the form of the question. If she does not object, then ask the questioning attorney, “Which part of that question do you want me to answer first?” The Judge will probably instruct the questioning attorney to break the question down into individual issues.
7. Often on cross examination, you will be asked to respond to a question by “yes” or “no” only. Most of the time the whole truth cannot be summed up in one of those words. Respond “yes, but... and attempt to explain or qualify your response. The cross examiner will probably cut you off, and insist on a simple “yes” or “no”. Give the one word response that comes closest to the truth, and then ask the Judge, “May I explain my answer?” You've got about a 60/40 chance that the Judge will permit you to explain right then. If he doesn't, you have alerted your attorney that she needs to clear the matter up on redirect. If the Judge denies you permission to explain, *say nothing more*, and wait for the next question.

8. Be wary of paraphrasing and mislabeling. Suppose you have just testified for five minutes, explaining in detail how an investigation is normally conducted. Defense counsel then says, “So what you’re saying is ...” and launches into a slightly skewed version of your account. Listen very closely to his statement, and correct any part of it that is not exactly what you testified to. Every time a defense attorney paraphrases, he is up to something. He is either trying to shift the emphasis of your testimony, slide over things uncomfortable for his client, or trip you up by getting you to endorse his version which in some small way contradicts your first statement. If the questioning attorney continues to try to reframe your responses to fit his needs, your lawyer will probably object, on the grounds that the question has been “asked and answered.”
9. Defense attorneys like to give the impression that DSS has far more power than it actually possesses. They will ask, “did you order the alleged perpetrator to leave the home?” Answer: “No. We entered a Protection Plan, which lasts for the duration of the investigation, and which was signed by the other parent, that the children would not have contact with the alleged perpetrator. DSS has no power to order anyone to do things – only the court can do that.” Take your time and explain things in simple terms. Be patient, but avoid condescension. The harder the defense attorney tries to twist things, the stupider he looks to the judge, who understood you plainly the first time.
10. If you are called to testify in a criminal proceeding, help the attorney who called you to keep things clear. Most of our assistant district attorneys are somewhat familiar with our investigative processes. Sometimes, they will employ language more fitting to describe police work, with which they are more familiar. In your response, use the term proper to our work. Keep dates and events clear and specific, even if the ADA doesn’t ask questions with such precision. If you use a term of art for social work (i.e. “substantiate” “neglect” “intrusive services”) define it. Nothing turns the jury off more than a stream of jargon. Nothing engages their attention more than testimony that teaches them new things.

Legal Writing Tips:

1. **Know your audience:** You are writing to a busy, impatient person who is accustomed to listening to concise recitations of legally significant facts and the arguments that can be logically drawn therefrom. A judge cherishes clarity and brevity, and focus on truly relevant things. A judge is wary of flattery, incompleteness, or anything that smacks of emotional manipulation.

2. **Know your purpose in writing:** When you write a report to the court in the context of a child abuse/neglect/ dependency case, you are doing one of the following things, and nothing more:
 - A. Identifying risks to, and needs of, the child in question.
 - B. Analyzing the causes of those risks and needs.
 - C. Prescribing curative actions to address those risks and needs.
 - D. Measuring the progress of others in addressing those risks and needs.
 - E. Setting out a reasonable plan for permanence, in light of those risks and needs, and progress made addressing same.

Your purpose in writing is not to justify yourself or your agency, or to contradict the opinions of others. Your purpose in writing is not to tell the judge everything that has happened in the case since the last review. Your purpose in writing is not to make the child or the parent feel good (or bad) about himself. Your purpose in writing is not to lobby for resources not presently available to you.

3. **Stay focused on your purpose in writing, and include only that information that is needed to achieve your purpose.** For example: a social worker's frustration level with a given case is usually at its maximum as she sits down to write a court summary in which she is recommending suspension of reunification efforts as futile. It is a very human impulse at this point to describe in detail every single missed appointment, hostile conversation, and lapse in judgment that has made this parent impossible to work with. Don't do it. If you correctly and completely identified the risks to the child in the home in your first report, then the court ordered all the things necessary to remove those risks. Simply set forth the parent's refusal or failure to take each step defined by the court to reduce the risk in the home, and briefly state why you believe the parent is not likely to achieve those things in the future.

4. **Be specific and concrete.** Avoid words or phrases that have been depleted of meaning by overuse. Example: the phrase "behavioral problems" has been used to describe everything from fidgeting to setting fires, and therefore it conveys very little. If little Bobby was suspended for cutting a classmate's pigtail off and calling the teacher a "honky bitch", then tell the court exactly that.

Social workers are trained to believe that every person is capable of changing his or her life for the better. Social workers are trained to communicate with clients in

gentle and supportive terms, and to accentuate the positive, so that clients remain motivated to make needed changes. This style of communication is not appropriate when you are writing a report to the court. Stay factual and focused, and don't pull any punches. If you soft-pedal problems, or overly praise parental progress, you run the risk that the court will send the child home before the family is truly ready.

5. **Avoid conclusory terms, or anything that smacks of a diagnosis.** If mother came to a ten a.m. office visit with red, glassy eyes, slurred speech, an unsteady gait and the smell of beer on her breath, state those facts, and not that "Mother appeared intoxicated." Let the doctors or psychologists decide whether or not a child is bipolar, or suffering from rickets.
6. **Don't waste time telling the court what it has already done.** It is okay to paraphrase a prior court order. The focus should be on whether or not the party has complied with the order, and not its actual language. If the judge needs to know the actual language of a prior order, he can look in the court file in front of him.
7. **Listen to yourself.** The best technique for improving the clarity of your writing is to read it out loud. Most of us have forgotten the specific rules of grammar. Our eyes gloss over problems as they move across the page, and make incomplete things whole.

Spell-Check does nothing but highlight those letter clusters it cannot recognize as words. Spell-Check is not programmed to recognize terms of art in law, medicine or pharmacy. Spell-Check does not distinguish between homonyms.

Our ears, on the other hand, detect things that our eyes or computer can miss. You can hear flaws in a sentence's structure, like noun-verb agreement or shifts in tense, that you would probably never see. Also, by reading aloud, you hear the writer's voice as the reader will. You might be surprised that you sound a little snippy, or whiney, or pompous, or sarcastic when the words you have chosen are actually spoken. In reading aloud, you will also become aware of repetition – you may not see that you are using the same word over and over, but you will hear it. The final virtue of reading aloud is that it reveals sentences that are just plain too long. Any sentence that requires you to draw breath in the middle needs to be cut at least in half. A short simple sentence that fully expresses a single idea should always be your goal.

Context is Everything.

Juvenile court is like no other. Its procedures and timetables for making decisions are prescribed by statute. The things a court must decide in a juvenile proceeding vary as the case progresses from one review to the next.

The Juvenile Code sets out a different procedure for the initial disposition, the statutory reviews (at 90 days or six months), the permanency planning hearing and the post termination of parental rights placement court review. A copy of the statute that governs each type of review hearing is provided as an appendix to this guide.

Depending on the size of your judicial district, the same judge may preside over juvenile court once a week, once a month, or once a year. A judge cannot be expected to remember each case's particulars, and will need some assistance in "getting up to speed". You need to help your judge by defining the procedural context of each case you report upon. You need to present your information in a manner that makes it easy for the judge to consider all of the factors that the statute requires the court to address at that moment in the life of that case.

To assist you in these tasks, four different formats have been designed for court summaries, one for initial disposition (ID), one for statutory review (SR), one for permanency planning hearings (PPH), and one for post-TPR hearings (PTR). The first three formats employ the themes of risk, needs, prescription for curative action, and measurement of performance discussed above. All of the formats require a statement of your opinion as to the best interests of the child.

Each format causes you to focus your report of information on those specific things the court is required to consider, at the stage of the proceedings for which it was designed. Each form begins with a heading that immediately alerts the judge to the age of the child, the age of the case, the type of hearing to be conducted, and the agency's case plan.

The Initial Disposition format (ID):

Read the copy of Sections 7B-903 and 7B-905 in the statutes found in your appendix. Then examine the format sheet for Initial Disposition.

The Initial Disposition Court Summary is the only one that should have two authors. The sections headed "Family History", "ICWA determination", "History of Investigation and Intervention by DSS", and "Risk of Harm that led to substantiation" should be completed by the social worker who performed the most recent CPS investigation. (If DSS attempted to provide treatment to the family for a long time after the investigation closed and before the petition is filed, or if new and

serious problems came to light during the course of attempted treatment, then the first three sections might better be written by the treatment worker.) All of the sections that follow those listed above should be completed by the foster care social worker. Both social worker/authors should be available to the court on the date set for hearing.

The first section should be a brief description of the family – its members, the marital status of parents, the location of the residence, and any significant facts related to the mental or physical health of the children.

The second section should list all inquiries made to determine whether or not the child in question is an Indian child. If the parents deny tribal affiliation, and no relative contacted during the investigation reports any possibility that the child could be eligible for tribal membership, then you state such facts. If mom is an enrolled member of a tribe, but your contact with the tribe's enrollment official led to the conclusion that the child had insufficient degree of Indian blood to qualify for tribal membership, set out such facts. The AG's office recommends that each court report and each court order address ICWA and MEPA concerns, because they believe that federal auditors will be searching for these elements in determining ASFA compliance. To keep IV-E moneys following, take the time to deal with these issues every time.

The third section should set out the background of the agency's involvement with this family, and should succinctly describe any efforts made to provide services or treatment prior to DSS's petition to take custody. (This lays the foundation for the court's needed findings related to "reasonable efforts".)

The fourth section is critical, and should be carefully and thoroughly drafted. By the time it is written, the investigative social worker will have completed several detailed decision-making instruments to assess risk in the child's family, as part of investigative case closure. With this analysis as a basis, the investigative social worker should list every one of the things within the family home that creates risk of harm to the child.

This list of risk factors provides a baseline from which progress will be measured for the remainder of the case's history. It must be comprehensive. A parent will cry foul if DSS seeks to address a risk factor for the first time at the permanency planning phase, especially if that risk was appreciated, and could have been addressed from the beginning. If the court can come to trust DSS to define all of the known risks within a household at the beginning, then the court will be able to act with greater confidence when the time comes to return the child, or to suspend reunification.

In a case in which parents are motivated to reclaim their children, a review of all court summaries in the case's history would reveal a gradual shortening of the statement of risk of harm over time. From the first lengthy list of risk factors in the initial summary, we might see a factor removed at the 90-day review, as parents

repair their home, or complete a parenting class. At the next review, dad may have earned his six-month chip from NA, so another risk factor is removed from the list. By the time of permanency planning, all of the risk factors are gone, and the agency and GAL are recommending return of the kids. With such a well-documented history of risk removal, the court's choice is a no-brainer.

In a case in which the risk factor list remains unchanged for two or three review periods, the message is equally clear: there has been no progress, and a change in the plan for permanence is in order.

The list of risk factors should be directly linked to the agency's recommendations for specific court orders aimed at reducing the risk and permitting safe reunification. In other words, don't point out a problem without proposing the solution.

After the investigative social worker has finished the first four sections of the form, the foster care social worker should complete the rest. Both workers should sign the copy of the Court Summary that is delivered to the court.

The Statutory Review Format (SR):

Read the copy of Section 7B-906 provided, and examine the format sheet.

This form is used for the first review at ninety days. It is used for the second review six months later *only if this second review has not been designated as a permanency planning hearing*.

The **Family History** section should be a *brief* review of the make-up of the family, DSS interventions, and the circumstances that led to the filing of the petition.

In drafting the **Present Risks of Harm** section, consult the first Court Summary. Address every risk identified in the initial disposition, and indicate whether it persists, or has been alleviated. At the ninety day mark, parents may have begun to work on a complex problem, like substance abuse, but may not have sustained improvement long enough to assure the child's safety. State plainly why the risk remains.

If a new problem in a parent's life has come to light since the last review, report how it was discovered, and what impact it has on risk of harm to the child.

If all of the originally identified risks to the child have been adequately addressed, and no new ones have been found, then you should be recommending reunification, or a

trial home visit. If all of the originally identified risks have been adequately addressed, but you are not recommending reunification, then consult with the agency attorney before going any further.

In the **Child's present circumstances** section, give the court an accurate picture of the child's present life. It is always a good idea to remind the court of the child's age and grade at school, as a reminder of the passage of time and a subtle reinforcement of the need to achieve permanence with some urgency.

In the **ICWA** section, describe your contacts with any new relatives since the last review, and any information they provided as to the child's Indian heritage or lack of same.

If the child's **placement changed** since the last review, explain the reasons for it. This is to provide the court with a basis for finding MEPA compliance, by concluding that DSS chose the child's current placement for reasons not solely based on race, color, or national origin.

In the **Court's Prior Orders** section, paraphrase what the court previously ordered each parent and the agency to do. In the next section, **Agency's Efforts**, explain the steps you took to comply with the orders, and to meet the child's needs. If you were unable to comply with an order, do not "skip over" it. Tell the court what you attempted to accomplish, and why you did not succeed.

Complete the next two sections to describe each **parent's circumstances and progress**. Refer to the court's prior orders. Be fair. If the parent attempted to comply with the court's order, but was unable to do so through no fault of his or her own, explain the parent's efforts and the nature of the obstacle. Alert the court to opportunities for progress that the parent failed to exploit.

The **Relatives as Resources** section is there to remind you that the search for willing and able relative placements is an ongoing process. The court needs to know if anyone has come forward, and how the appropriateness of the household was measured.

The **Agency's Recommendations** section should contain a course of action to address every remaining risk of harm to the child in the parent's home, and should also provide for the child's individual needs for treatment, placement, or special education. If it is important that the parents continue to comply with any of the court's prior orders, state this plainly. Do not refer to the Family Services Case Plan unless you have attached a copy, and do not try to "short hand" your recommendations by reference to it. Often this last section of your report gets the judge's most focused attention, as DSS's bottom line.

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The Permanency Planning Hearing format (PPH):

Read the statute section 7B-907, and examine the format provided. Once you hold a hearing designated as permanency planning, the court summary for each subsequent review hearing until TPR or return to parents should use the PPH format. When a case is ripe for permanency planning, the focus shifts somewhat from the report of progress emphasized in earlier reviews. Now the very goal towards which the court is working is being scrutinized, and may need to change. Everything in your report should lead to the ultimate question: what is the best plan of care to achieve a safe, permanent home for the child within a reasonable period of time?

Note in the heading of the court summary that you are asked to state how many months out of the last 22 this child has been in an out-of-home placement. If that number is fifteen or greater, then the court must consider ordering DSS to initiate termination proceedings, unless the permanent plan is custody or guardianship with a relative, or DSS has failed to provide the family with services it deems necessary to achieve reasonable efforts, or the court makes *detailed findings* as to why TPR is not in the child's best interests.

As in the statutory review formats, you need to address **Family History and Present Risks of Harm**. You also need to provide the court with any new information concerning the child's **Indian heritage**. In addition, you must now state your opinion as to the **likelihood that the child could return home within the next six months**. This determination should be very specific for the parents and child in question. Take into account the parent's rate of progress (and any backsliding that has occurred) and any special needs of the child which have become clear during his stay in foster care.

Under the **Child's Present Circumstances**, etc., you should bring the court up to date on the child's welfare. In the permanency planning hearing, it is appropriate for you to discuss the child's emotional attachment to his parents, and the impact that termination of parental rights would have upon the child. If the **child's placement changed** since the last review, provide a concise statement of the reasons a change was necessary, and the child-specific reasons the present placement was chosen.

The sections related to **Court's Prior Orders, Agency's Efforts, Mother's Progress and Father's Progress** should be completed as in earlier reviews.

The next four sections are *unique to the PPH format*. In the first, you should address **feasibility of adoption** or permanent placement. Is there someone out there willing to adopt this child? If no such person has yet been found, how "adoptable" is this child, in terms of age, culture, sibling connection, and behaviors? The next section goes to **barriers to adoption**, and should include such things as the child's resistance to

adoption, or the lack of legal clearance for adoption. The next section asks you to examine the **appropriateness of continuing the child’s present placement**. Sometimes when the plan for permanence changes, a new placement may be better for the child, and more conducive to achieving the new plan.

In all of this analysis, keep in mind that the **law still favors relatives over strangers** as participants in plans for placement and permanence. The court still needs to know if any kin have come forward since the last review.

The last section is the **Case Plan**. Recommend the plan that you believe is most likely to result in permanence in a reasonable time. If more than fifteen months have passed since the child came into care, and you are not recommending suspension of reunification efforts and TPR, then take the time to explain your recommendations in terms of the child’s best interests.

NOTE: Often, it is in the context of a PPH that we are recommending that custody or guardianship be given to a long-time non-parent caregiver, and that further reviews be suspended. The Court of Appeals has now interpreted the Juvenile Code to require that, whenever custody or guardianship is given to a non-parent as the permanent plan, the court needs to enter a specific order as to each parent’s ongoing visitation, including such details as time, place and conditions. Visitation can not be left solely to the discretion of the child’s caretaker. You need to set forth the agency’s specific recommendations for ongoing parental visits in the court summary, unless you intend to argue that the parent in question has somehow forfeited any right to visitation.

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The Post-Termination Placement Court Review format (PTR):

Read the statute section 7B-908, and review the format.

The court summary for this type of proceeding is *very different* than the others. By the time you are preparing the PTR court summary, the parents have either relinquished, or had their rights judicially terminated. *Your agency holds legal custody and full placement discretion*. The court’s review is focused on whether or not DSS is moving quickly enough towards permanence, by taking reasonable steps to find the child a home. At this point, the only parties to the case are the child, his GAL, and DSS. The court is required to consider the adequacy of DSS’s plan to find a permanent home, whether or not DSS has availed itself of listing resources to locate an adoptive home, and what efforts DSS has already made. The court then affirms the DSS plan, or requires specific additional steps to hasten the process.

Begin by stating briefly **how and why parental rights were terminated**. Then focus on the child’s present status. Once again, take the time to address any newly acquired

information about the child's Indian heritage. If the child requires therapy to enhance his ability to become a part of a family, then state that need. If the child's wishes, or likely consent to adoption are known, state them, even if the child is too young for his actual consent to be required. Address the child's need, if any, for contact with his natural parents.

If an adoptive placement for the child has been tried, and has failed, you should take the time to analyze that failure. Prescribe the steps you think are necessary to enhance the likelihood that the next placement will succeed.

If a prospective adoptive placement has been chosen, explain in terms specific to the child's needs and best interests how this choice was made. (Again, this gives the court the information needed to make findings of MEPA compliance.)

List the **court's prior orders** related to this plan for permanence, and list the adoption resources you have used. Address the appropriateness of continuing the present placement. If the current plan is achieving reasonable progress towards permanence, then there is no need to add to it. If you think a new tactic might lead to swifter progress, then recommend that to the court.

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Appendix:

Court Summary (Initial Disposition)

Court Summary (Statutory Review)

Court Summary (Permanency Planning Hearing)

Court Summary (Post-TPR placement court review.)

COURT SUMMARY IN THE MATTER OF:

FILE NO:

DATE OF HEARING:

CHILD'S AGE: IN AGENCY CUSTODY SINCE:

FAMILY'S OTHER CHILDREN:

TYPE OF HEARING: Initial Disposition

PLAN A: PLAN B:

Family History:

ICWA determination: Upon diligent inquiry, the investigative social worker has discovered the following information as to this child's Indian heritage and eligibility for membership in a federally recognized Indian tribe:

History of Investigation and Intervention by BCDSS:

Risks of harm that led to substantiation:

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Child's Present Circumstances, Needs and Wishes:

Change of placement under MEPA: If the child's placement has changed since the filing of the petition and entry of the original Order to Assume Custody, then it was changed for the following reasons:

=====
Present Risks of Harm to Child in Family Home:

Agency's Recommendations to Eliminate Risk of Harm in Family Home:

Agency's Recommendations to Meet the Child's Needs:

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Mother's Present Circumstances and Progress to Date:

Father's Present Circumstances and Progress to Date:

Relatives as Resources:

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Case Plans:

Report prepared by: _____
Beaufort County D.S.S.

COURT SUMMARY IN THE MATTER OF:
FILE NO: _____ **DATE OF HEARING:** _____
CHILD'S AGE: _____ **IN AGENCY CUSTODY SINCE:** _____
FAMILY'S OTHER CHILDREN: _____

TYPE OF HEARING: (___) 90 days or (___) 6 months review 7B-906.
PLAN A: Reunification with parent. **PLAN B:** _____

Family History:

Present Risk(s) of Harm to Child in Family Home:

=====

Child's Present Circumstances, Needs and Wishes:

Any new information related to the child's Indian heritage, or eligibility for membership in any federally recognized tribe:

Reasons for change in placement since last review:

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Court's Prior Orders in Furtherance of Reunification:

Agency's Efforts in Furtherance of Reunification:

=====

Mother's Present Circumstances and Progress to Date:

Father's Present Circumstances and Progress to Date:

Relatives as Resources:

=====

Agency's Recommendations:

Report prepared by: _____

Beaufort County D.S.S.

COURT SUMMARY IN THE MATTER OF:

FILE NO:

DATE OF HEARING:

CHILD'S AGE: In out of home placement for ____ out of the last 22 mos.

FAMILY'S OTHER CHILDREN:

TYPE OF HEARING: Permanency Planning Hearing (7B-907)

AGENCY'S PROPOSED PLAN FOR PERMANENCE:

Family History:

Any new information on child's Indian heritage or eligibility for membership in a federally recognized tribe:

Present Risk(s) of Harm to Child in Family Home:

Likelihood Child Could Return Home Within Six Months:

=====
Child's Present Circumstances, Needs and Wishes:

Reasons for change in placement since last review:

=====
Court's Prior Orders in Furtherance of Reunification or Other Plan for Permanence:

Agency's Efforts in Furtherance of Reunification or Other Plan for Permanence:

=====
Mother's Progress Since Last Review:

Father's Progress Since Last Review:

=====
Feasibility of adoption or permanent placement with relative or other suitable person:

Barriers to adoption:

Appropriateness of continuing present placement:

=====
Case Plans: BCDSS recommends the following as the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time.

Report prepared by: _____
Beaufort County D.S.S.

COURT SUMMARY IN THE MATTER OF:
FILE NO: _____ **DATE OF HEARING:** _____
CHILD'S AGE: _____ **IN AGENCY CUSTODY SINCE:** _____
PARENTAL RIGHTS TERMINATED ON: _____
FAMILY'S OTHER CHILDREN: _____

TYPE OF HEARING: Post termination placement court review (7B-908)

How and Why Parental Rights Were Terminated:

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Child's Present Circumstances, Needs and Wishes:

Any new information related to the child's Indian heritage or eligibility in any federally recognized Indian tribe:

Child's Consent to Be Adopted:

Child's Need for Continued Contact with Natural Parents:

Reasons for selection of prospective adoptive family:

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Court's Prior Orders in Furtherance of Plan for Permanence:

BCDSS has taken the following steps in furtherance of the plan for permanence:

1. (____) Listed the child with the North Carolina Adoption Resource Exchange.
2. (____) Listed the child with the NC Photo Adoption Listing Service (PALS).
3. (____) Listed the child with the following specialized adoption agencies:
4. (____) Other steps:

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Appropriateness of continuing present placement:

Additional steps recommended by BCDSS to facilitate the plan for permanence:

Report prepared by: _____
Beaufort County D.S.S.

WORKSHEET: HANDLING COURT-RELATED RESPONSIBILITIES

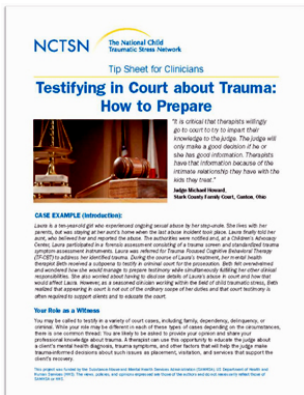
Responsibility	Who Should Do It
1. Respond to CPS reports	
2. Discuss facts with policy, medical professionals, teachers, etc.	
3. Prepare petition	
4. Notify parties of hearing	
5. Identify witnesses	
6. Prepare witnesses	
7. Prepare child witnesses	
8. Prepare exhibits for hearing	
9. Other court preparation	
10. Present case in court	
11. Enter into agreements with parents	
12. Ongoing documentation	
13. Attend meetings with family	
14. Ongoing casework	
15. Decide when to terminate parental rights	
16. Refer case from criminal prosecution	

Adapted from Laver, M. (1999). *Foundations for success: Strengthening your agency attorney office*. Chicago, IL: American Bar Association.

REFERENCES

- Laver, M. (1999). *Foundations for success: Strengthening your agency attorney office*. Chicago, IL: American Bar Association.
- Perry, B. & Welch, L. (2002). Testifying in juvenile and family court: Preparing for depositions, hearings and trials. In Bruce Perry, Ed., *Child Trauma Academy's Interdisciplinary Education Series*. Retrieved June 6, 2013 from <http://nmhealth.org/ddsd/nmfit/Providers/documents/TestifyinginJuvenileandFamilyCourt-BrucePerry.pdf>

RESOURCES FOR LEARNING MORE



Testifying in Court about Trauma: How to Prepare National Child Traumatic Stress Network (2013)

This is a fact sheet that offers clinicians guidance on testifying as an expert witness for a client's court case. From understanding a subpoena, the right of confidentiality, and the therapist-client privilege to preparing yourself, your client, and his/her caregivers for your court appearance, this fact sheet lays out ethical considerations, describes how to navigate conversations with your consumers, and gives you self-care tips.

http://www.nctsn.org/sites/default/files/assets/pdfs/testifying_act_sheet_final.pdf

Bench Cards

National Child Traumatic Stress Network (2013)

The NCTSN has developed two bench cards for judges and court-appointment professionals doing mental health assessments of children.


- [NCTSN Bench Card for the Trauma-Informed Judge](http://www.nctsn.org/sites/default/files/assets/pdfs/judge_bench_cards_final.pdf)
- [NCTSN Bench Card for Court-Ordered Trauma-Informed Mental Health Evaluation of Child: Sample Addendum](http://www.nctsn.org/sites/default/files/assets/pdfs/judge_bench_cards_final.pdf)



Both raise useful questions and provide judges with guidelines to help them base their decisions on scientific findings emerging in the traumatic stress field.

Building a Foundation for Success in Court
Strengthening Teamwork between DSS Attorneys & Social Workers

Click on the link to download the handouts:
[June 18, 2013 webinar handouts](#)



Agenda


1. Brief orientation & introductions
2. Testifying & trauma
3. Role clarification
4. Top 10 things we need from each other
5. Case examples
6. Q & A

Introductions

Presenters:
 Alice Espenshade
*Attorney
 Beaufort County DSS*

Holly McNeill
*MRS Consultant/Trainer
 NC DSS*

Angie Stephenson
*Assistant Attorney General
 NC Dept. of Justice*



Producers:
 Mellicent Blythe
 Phillip Armfield
 John McMahon

Testifying & Trauma

Traumatic Aspects of Court

Testifying can re-traumatize children

- New and threatening environment
- Intimidating people and questions
- Feeling attacked and alone
- Triggering painful memories and sensations
- Loss of control

Testifying in court gives you a window into these feelings since you may experience a parallel process!

Perry & Welch, 2002



What to Do?

1. Know that a stress response is normal and expected when testifying
2. Understand your role and the role of others at your agency in making the hearing informative for the judge and helpful for the child's safety, well-being, and permanency
3. Prepare!
4. Debrief

Role Clarification

Social Worker's Role

You're the client. Attorney is your legal counsel.

- ▶ Provide info. about what has happened that has led agency to the case decision.
- ✓ What is the evidence this is the right decision and is in the child's best interest?
- ▶ Written report for hearings
- ▶ Testimony for Adjudication & TPR hearings




Supervisor's Role

You provide critical oversight.

Ensure social workers:

- ▶ Get prep time with attorney
- ▶ Take time to prepare reports and testimony and have help




Use your chat box:
How do you support and prepare your workers for court?

Attorney's Role

- Gives counsel on what is needed for court (rules, legal definitions, etc.)
- Prepares social workers for court

Not to make case decisions



Benefits of Teamwork

- ▶ Less trauma for children
- ▶ Less anxiety for social workers
- ▶ More efficient and effective hearings
 - The right witnesses
 - Relevant testimony
- ▶ Positive reputation with Court and community

Can improve outcomes for children:


- Increased safety
- Improved well-being
- Faster permanence

Top 10 Things We Need from Each Other

13

Questions to Set the Stage

1. Who does your attorney represent?
The agency as an entity
2. What advantage does DSS have, over every other kind of civil litigant?
The opportunity to accumulate credibility.



1. Mutual respect

- ▶ I'm not a social worker, and that's a good thing.
- ▶ The hierarchy of the law creates the impression that lawyers disrespect the policy you live by.
- ▶ When it comes to protecting children, no one's job is easy, and failure is not an option.

2. Access

- ▶ Time is money
- ▶ Staff attorney v. contract attorney
- ▶ Face-to-face access v. sharing essential information in writing
- ▶ Use of paralegals

3. Communication

- ▶ Don't be afraid.
- ▶ Not all facts are legally salient.
- ▶ Relate events and conditions in the order in which they occurred, not in the order in which you discovered them.
- ▶ Use the mode of communication with your attorney that is most likely to bring your issue to her attention within the shortest time.

3. Communication, cont.

- ▶ Create a culture that nurtures and demands clear, complete, accurate, and timely communication of fact in:
 - dictation
 - meetings and staffings
 - court reports

4. Preparation

Before speaking to the attorney:

- Think through the events of the case, and be ready to recite them chronologically.
- If conflicting evidence has been received, decide what you believe happened.

Preparation, cont.

If you are seeking to have a petition filed, be ready to answer all these questions every time:

1. Where and when was this child born?
2. Who is the father, and how has his paternity been established?
3. Does this child have any degree of Indian blood in a federally or state recognized tribe?
4. Where has this child lived, and with whom, over the last five years?
5. Has anyone gone to court, in this or any other state, in an action related to the custody of this child?
6. Does anyone other than a parent claim to hold custody or guardianship of this child?

5. Early Identification of Problems

- ▶ We are all human, and the court knows this.
- ▶ The law, in general, is designed to permit the *prompt* correction of *small* errors.
- ▶ You may not recognize the legal magnitude of a practical problem, until you discuss it with agency counsel.

6. The Game Plan

Prioritizing legal actions:

- Child Welfare supervisors should meet periodically with the attorney to set the priority of cases requiring new legal action (juvenile petitions and TPRs).
- Priority should be based on: stability of safety plan, IV-E deadline, severity of risk if returned home, parental cooperation to date, planned move of party or key witnesses, need to quickly facilitate adoption.

Game Plan is Determined by...

- ▶ Short-term: the outcome desired for a given case at a given review hearing.
- ▶ Long-term:
 - Final outcome desired for a juvenile case
 - Accumulation of credibility
 - Implementation of agency's or state's goals in achieving permanence, safety
 - Philosophy & practice of discovery

7. Full Disclosure

- ▶ *To attorney:* no good comes from keeping your attorney in the dark.
- ▶ *To the court:* we need to have faith in the ability of the trier of fact to assign appropriate weight to information presented.

EXAMPLE

At a Permanency Planning Hearing, if a dad has achieved 20% of his case plan, but failed on the remaining 80%, tell the court about both.

8. Context

- “We have history with this family!”
- The age of a case determines the information the court requires, the decisions it must make, and the dispositional choices available to the court.
- You may need to understand the context of appellate court decisions.

9. Interpretation

Of the law requires analysis of:

- the language of the statute
- the language of any appellate opinion that has interpreted the statute
- the statute’s interaction with state or federal constitutional principles

Of policy requires application of:

- case-specific facts to the criteria established in policy
- in light of training provided by the state, and
- the worker’s knowledge of available resources and local practice

9. Interpretation, cont.

- In the “old days” I knew who within my own agency was the resident expert on Medicaid for foster kids, food stamp eligibility, daycare subsidy, etc.
- Warn your agency attorney about the coming of NC Fast and the Universal Worker, and the gradual loss of the deeply knowledgeable “go to” specialists.

10. Nobody Stops Trying Till It Works.



Example 1

I don't know if a child should testify.

- ▶ Who should be involved in the decision?
- ▶ What issues do you need to consider?

Example 2

I forget details of a case while on the stand.

- ▶ What should you say or do?

Example 3

I'm asked hostile questions by the parent's attorney.

- What are the hard questions you've been asked or that you fear?
- What is the best way to respond?

Example 4

My opinion is different from my agency's case decision.

- What should you say or do?


Example 5

I don't feel good about the work done by my agency before I got the case.

- What should you say or do?

Transfer of Learning

1. What is one thing you will do differently the next time you or one of your workers have a hearing coming up?
2. What do you most need from your supervisor, agency, or others to improve your experience with testifying?



34

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Final Steps

1. Please take a brief survey
 - We will provide link for those logged on
 - Can also access thru ncswlearn.org
2. To receive training credit, you must "Complete Course" **WITHIN ONE WEEK**
 - ✓ Log in to www.ncswlearn.org
 - ✓ Select "PLP"
 - ✓ Select "Webinars"
 - ✓ Click "Enter"
 - ✓ Click "Complete Course" button

36

Follow-up Document from the Webinar

Building a Foundation for Success in Court: Strengthening Teamwork between DSS Attorneys and Child Welfare Professionals

Webinar delivered June 18, 2013

Follow-up document date: July 10, 2013

Presented by

NC DIVISION OF SOCIAL SERVICES

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Child Welfare Services Section

NC DEPARTMENT OF JUSTICE

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BEAUFORT COUNTY DSS

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Produced by

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School of Social Work, University of North Carolina at Chapel Hill

Sponsored by

North Carolina Division of Social Services

Handouts. Be sure to consult the handouts for this webinar:

https://www.ncswlearn.org/ncsts/webinar/handouts/29_Webinar_Handouts_6-18-13.pdf

Recording. If you missed the webinar or want to view it again, you can access a recording of this event

by going to: <http://fcrp.unc.edu/videos.asp>

Topics Covered in this Document

1. Responses to Questions Asked During the Webinar	2
2. Ways Supervisors Participating in the Webinar Say They Support and Prepare Workers For Court.....	3
3. Deciding Whether a Child Should Testify	3
4. What to Do If You Forget When You’re Testifying	4
5. When the Parents’ Attorney Is Hostile.....	4
6. When You Do Not Agree with Your Agency’s Position.....	5
7. When You Don’t Feel Good about the Quality of the Work Done Before You Began Working the Case.....	5
8. Participant Take-Aways.....	5

Answers and Resources from the Webinar

I. Responses to Questions Asked During the Webinar

Should we testify at every hearing as well as provide a summary for each review?

Alice Espenshade: You should always be prepared to testify. If you are the author of a report being presented or discussed during a hearing you should be in the courtroom to clarify if need be. I usually help social workers prepare by asking them questions I expect them to get during cross-examination.

Should the social worker involve the parents' guardian ad litem (GAL) attorney when negotiating important agreements with parents?

Alice Espenshade: When a parent has such vulnerabilities or needs that the court has seen fit to appoint a GAL attorney for them, you know the case is extra sensitive. In this case you probably should be involving them. It can't hurt to include or invite a parent's GAL.

What if DSS has a different recommendation than the GAL?

Angie Stephenson: This is not uncommon. Just be professional and acknowledge that the agency is looking at things holistically and that this is the agency's recommendation. A webinar participant adds: "If you communicate with the GAL regularly you can be prepared for any differences."

What should I do if my staff need an introduction to the relationship between the child welfare and court systems?

If they haven't already done so, encourage them to take the course *Legal Aspects of Child Welfare in North Carolina*. This course is sponsored by the NC Division of Social Services and is mandatory for all child welfare staff within their first year of employment. If it has been several years since a child welfare social worker, supervisor, or administrator has taken the course, they are welcome to take it again as a refresher course or to learn how laws affecting child welfare have changed. To learn more about this training or to register, log in to www.ncswlearn.org.

Is there a required format for reports to the court that county DSS agencies should use in child welfare cases?

No, there is no required format. However, the Division of Social Services has made available the following model court reports for the following types of hearings:

- Dispositional and Review Hearings (DSS-5310)
<http://info.dhhs.state.nc.us/olm/forms/dss/DSS-5310-ia.pdf>
- Permanency Planning Hearings (DSS-5311)
<http://info.dhhs.state.nc.us/olm/forms/dss/DSS-5311-ia.pdf>
- Post Termination of Parental Rights Hearings (DSS-5312)
<http://info.dhhs.state.nc.us/olm/forms/dss/DSS-5312-ia.pdf>

These model court reports are recommended but not required, as long as a county's report contains all of the information contained in the model court reports.

Are there any resources available to help us explain to foster parents or kin caregivers what their role is when it comes to court?

When it comes to court, foster parents have a vital role to play. Although judges ultimately make the decisions, foster parents can have a huge impact on the lives and welfare of children by attending court and sharing information about the children in their homes. To support them, the November 2012 issue

of *Fostering Perspectives* shares key information about the courts and the role foster parents can play. Articles in this issue include:

- Supporting Young People When it is Time for Court
- Youth in Care Speak Out: What I would like to tell a judge about my family
- Advice for Foster Parents about Going to Court
- A Judge's Perspective on Foster Parents and Court: An Interview with Judge Monica Bousman
- An Explanation of the Role of Guardians ad Litem (GALs)
- Overview: The TPR Process in North Carolina
- How CFTs Can Contribute to the Success of Court-Ordered Plans

To read or print this issue, go to <http://www.fosteringperspectives.org/fpv17n1/v17n1.htm>.

2. Ways Supervisors Participating in the Webinar Say They Support and Prepare Workers for Court

- Help them understand the purpose of different types of hearings so they can understand the overall goal
- Have them observe the court process and spend time speaking with the DSS Attorney
- Have them attend staffings with DSS attorney
- Proofread summaries in their presence so that they know what is needed and why; proofread all court summaries; be sure to review court reports prior to giving to other parties (parents' attorneys, GAL)
- Develop a timeline of events that led to the petition and assist in creating the court summary; especially if the case exceeds 6 months
- Prepare a "cheat sheet" of important dates and facts from court summary so information is readily available to the worker
- Develop family trees for potential placements - in case we are asked by counsel
- Make sure facts are accurate; review court report, timeline of events, and ensure family strengths are noted
- Allow staff "shutdown time" to prepare paperwork and complete other steps to address placement of juvenile as well as meet with family and prepare for court
- Social worker and attorney work together to identify who should be called as a witness

3. Deciding Whether a Child Should Testify

Who should be involved in decision?

Participant responses:

- Child's therapist/mental health professionals working with the child
- DSS attorney
- Child's guardian ad litem (GAL) and GAL attorney
- "The team"
- The child
- Child's social worker and his/her supervisor
- Parents who still may have rights
- Foster parent/caretaker
- Judge

What issues do you need to consider in making the decision?

Participant responses:

- Child's age and maturity
- Child's ability to be truthful (validity level of the child)
- Child's emotional stability/psychological safety
- Whether there is information that only the child can provide to the court
 - If the answer to this question is yes, consider whether there is another way to get statements from the child to the court. Work with your attorney to see if there is a way to get the information admitted in court in a form other than direct testimony of the child (e.g., written record, video of the child).
- The lasting impact on the child if the child is asked to divulge information about the parents in the presence of so many people
- How to prepare the child for any testimony he/she may give (visiting the court room, knowing what to expect, bringing a support person, etc.)

4. What to Do If You Forget When You're Testifying

Participant responses:

- With permission of the judge, check your notes/ "cheat sheet" to refresh your memory
- Ask the attorney for clarification
- Breathe, relax

Is it ok to say "I do not recall"?

Alice Espenshade: Absolutely. When you give this kind of response, typically an attorney would then ask: is there any way you can refresh your memory? If looking in dictation or records will help, say so; the court will likely permit you to do this. If you truly draw a blank and can't remember, explain this to the court. The judge will likely understand—the law does not expect that people will always remember everything.

5. When the Parents' Attorney Is Hostile

What are hard questions you've been asked or fear being asked while testifying?

Participant responses:

- What have you done to help the family?
- Are you a social worker or cheerleader?
- What is your degree in? Are you a parent?
- How is what you have done an effort to help the family?
- What is your personal opinion? Do you agree with the department's stance at this time?
- Personal information (where do you live, do you have children)
- Questions about policy, saying that it is not in the child's best interest to go home
- When there are multiple questions in one statement from the attorney to try to confuse you
- When you answer --- they turn it around and ask the same question a different way the next time
- Being cut off in making your response is a fear in court.

- *Angie Stephenson*: sometimes you can ask to explain your answer. Some judges will allow and some won't. Even if they do not, it alerts your attorney what to focus on during rebuttal.
- One participating agency shared: "Our attorney tells us not to answer more than what we are asked. If it is a yes or no, don't give more."
- When they ask about other cases
- I have also been asked why a criminal conviction did not show up on a certified criminal record

What are best ways to respond when the parents' attorney is hostile?

Participant responses:

- Allow the DSS attorney to object to the question
- Take your time in responding. Slow the pace to change questioner's momentum
- Take a moment of silence before response to maintain professional demeanor
- *Angie Stephenson*: If there is something you are especially worried about, talk to your attorney ahead of time. This is particularly true if you want your attorney to object to something about your personal life.

6. When You Do Not Agree with Your Agency's Position

Holly McNeill: This is an important issue. The way you handle this situation can affect your agency's credibility not just in this case but its overall reputation with the court. Avoid disagreeing with your agency's position in the courtroom. If you are asked for your personal opinion you can say, "I don't have a personal opinion—just a professional one. My opinion is the agency's." A participant added that you can also say, "We don't make decisions independently."

7. When You Don't Feel Good about the Quality of the Work Done Before You Began Working the Case

Holly McNeill: Sometimes the work done before you received the case wasn't good. Other times it is just a difference of style. If you have concerns, talk to your supervisor about them. Preparation is important. If something wasn't done well in the past you can't go back and change it—the agency needs to have a plan for how this will be addressed in court. Your supervisor may be able to put it in context for you. Even if you have inherited a mess, make the best of it—try to get the case up to speed by doing the best you can as the current social worker.

8. Participant Take-Aways

What is one thing you will take away from this webinar? What will you do differently the next time you or one of your workers have a hearing coming up?

Participant responses:

- Remember the importance of preparation time! Provide more time for counsel on each case
- Have staffing time with DSS Attorney before court
- Have attorneys speak with clients BEFORE court
- We need better communication; continue to keep all lines of communication open
- Schedule specific prep times and be available as scheduled
- It is good for child welfare professionals and DSS attorneys to better understand each other's roles
- Our agency is holding mock trials today to give newer workers a chance to experience testifying
- Conference more often about big calendar days and prioritize cases that need to be heard
- Have specific questions for our attorney and having more staffing time with the attorney
- Have pre-trial meetings with our agency attorney.

- Stay in contact with attorney
- Debrief after court
- Getting feedback on what evidence I need to be looking for in a case to have a solid basis for a petition and/or TPR
- Scheduling Regular/consistent meetings with attorneys
- We currently have attorney facilitated court trainings every so often. In addition to this it would be helpful to make attorney-led court training a mandatory part new social worker orientation.