

# DEPARTMENT OF CHILDREN AND FAMILIES CHILDREN'S LEGAL SERVICES

## TESTIFYING IN DEPENDENCY OR TPR CASES

### A. BEFORE YOU TESTIFY

1. Be familiar with the case. Investigators and case managers in child welfare are all involved in numerous cases, and you may no longer be working on the case when you are called as a witness. Nevertheless, you are being called as a professional witness on behalf of the Department, and you are expected to be able to testify about the case and what happened during your involvement. Therefore, before you testify, make sure you review your notes and remind yourself about what happened in the case.
2. Records custodian testimony. From time to time you may be asked to testify as the "records custodian" for your agency. When a case goes to trial, the attorney may want the court to know the prior history of abuse reports and services provided to the family. You may be asked to present those records, and authenticate them as records made at or near the time of the event, and kept in the regular course of your work. Check with the attorney whether you will be asked to do this in a particular case. If you are going to testify as a records custodian, make sure that you have reviewed the records and are familiar with them.
3. Attorney conference. If the attorney has informed you that you will be needed as a witness, make sure that before the trial you discuss with the attorney your expected testimony and the questions he or she intends to ask you.

### B. IN COURT

4. Be a professional. Be on time, be prepared, be courteous, have your files with you, and dress appropriately. Dress as though you are attending a job interview.
5. Be prepared to outline your professional qualifications and experience. At the beginning of your testimony, you may be asked to outline your education, training, and experience in child abuse and neglect. You may also be asked to explain the duties and responsibilities of your particular job.
6. Answer all questions verbally. It is not sufficient to nod or shake your head in answer to a question. You must speak in answer to questions.
7. Direct your answers to the judge. Although you will be questioned by the attorneys, your testimony is for the benefit of the judge. When you answer the question you should face the judge, and direct your answers towards him or her, and not towards the attorneys.
8. If an attorney objects, stop speaking. As soon as an attorney starts speaking, **stop** what you are saying and listen. Do not say anything else until the judge rules upon the objection. If the judge overrules the objection, you should answer the question. If the judge sustains the objection, that means you should not answer the question. If you are unsure whether or not you should answer, ask for clarification.
9. Tell the truth. The truth, even if it seems bad to you, will not hurt the case nearly as much as a lie. An attorney may explain away the truth, but it is much harder to explain why a witness lied or concealed the truth. The deliberate concealing of the truth, or telling a lie, will be devastating to your credibility.
10. If you do not understand the question, say so. You are entitled to understand the question before you attempt to answer it. Do not attempt to answer the question if you are uncertain about its meaning. Ask the attorney to restate or clarify the question.
11. Refresh your memory from notes while testifying. You are expected to be familiar with the case, but you are not expected to be able to remember every detail without looking at your notes. If you have notes which would refresh your recollection, ask if you may refer to them. You will usually be allowed to refer to notes in order to remind

yourself of what happened. You may not read the notes to the court. You may look down at the notes and refresh your memory, but you must then look away from the notes and give your testimony.

12. If you do not know the answer, say so. Do not try to guess the answer to a question. If you do not know the answer, or can not remember the answer, say so, even if you think you should know the answer. It is better to admit ignorance than to guess at an answer that is later shown to be wrong. Confine your answers to the facts which you personally know and can remember. Do **not** turn to another witness or to your attorney and ask for the information. If you think you know the answer but are not positive, you may use a phrase such as “to the best of my recollection”.

13. Give positive, definite answers whenever possible. Do not qualify your answer with phrases such as “I think”, or “I believe” when you are stating facts. Reserve those phrases for when you are being pressed to answer a question and you truly are not sure of the answer. Avoid using phrases such as “I guess”, “I assume”, or “I suppose” in any circumstances. Those phrases detract from your credibility and professionalism.

14. Listen to each question carefully, and think before you answer any question. Listen carefully to the complete question. Do not start to speak until the attorney has completely finished speaking. Do not rush to answer even a simple question too quickly. The question may be objectionable and your attorney may want to direct you not to answer. However, if you answer too quickly, your answer will be on the record before the attorney has time to speak.

15. Do not volunteer information. Answer only the question that is asked, and answer it in as few words as possible. Do not expand upon, explain, or excuse an answer., unless you are asked to do so. For example, if the question is "Did the father admit to using drugs?" the answer should be "No" not "No, but the mother did". Do not speculate or guess at an answer unless specifically asked to do so.

16. Your answers should be framed in terms of your personal knowledge. **Do not repeat statements made by any other person, unless specifically asked to do so.** The judge is interested in your personal knowledge and what you observed, not what other people told you. Most statements made to you by other people are what is called “hearsay” and most hearsay statements are not admissible at trial. The exception is statements that the parents made to you. Those statements are considered admissions and are usually admissible in court. However, statements made by anyone else are usually not admissible. For example, if a neighbor told you that he saw a mother injecting drugs in her child’s presence, you cannot testify that the mother was actually injecting drugs or that the neighbor told you the mother was injecting drugs. That neighbor, who has the personal knowledge, will have to come and testify about what he observed. The admissibility of hearsay statements is a complex legal issue that your attorney will address. You should only testify about what someone said to you if you are specifically asked to do so.

17. Do not argue with an attorney. You are a witness and your role as a witness is to present the information which you know. You are not there to sell the case. The opposing attorney may try to make you angry or excited, hoping that you will say something which can be used against you, or that the effect of your testimony will be destroyed by your emotional reaction. Therefore, be careful to stay calm. Do not argue with opposing counsel. Answer the question that is asked, and leave it at that.

18. Admit preparing for the hearing with your attorney. You may be asked if you discussed your testimony with any one before the trial. There is nothing wrong with going over your testimony with you attorney in advance of the trial.

19. Do not joke when you are giving testimony. Your humor will not be apparent when the transcript is read and it may make you look foolish or cavalier about the truth.

20. Be careful with opposing counsel and his questions. No matter how pleasant he seems, he represents the opposing side and is not your friend. Be aware of that when answering his questions. Beware of questions that rephrase what you said. Opposing counsel may try and take your answer, and put it into different words, which may change the meaning that you intended. You are entitled to stick with the answers that you gave. Also, be careful in responding to questions that contain words such as "never" or "always".

21. “Invoking the Rule”. If the Rule is invoked, this means persons who will be called to testify are excluded from the courtroom until they testify, and they may not discuss their testimony or the case with each other.