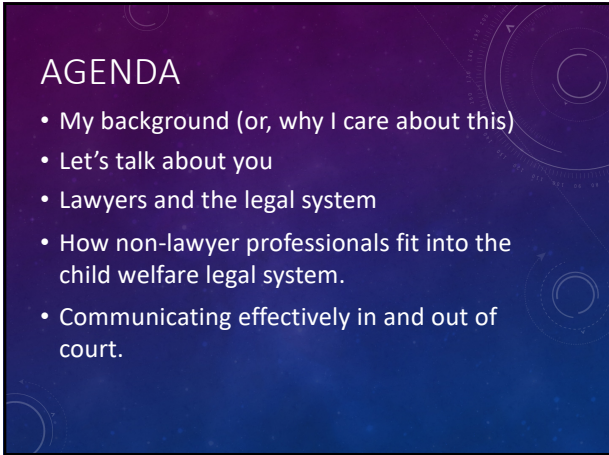


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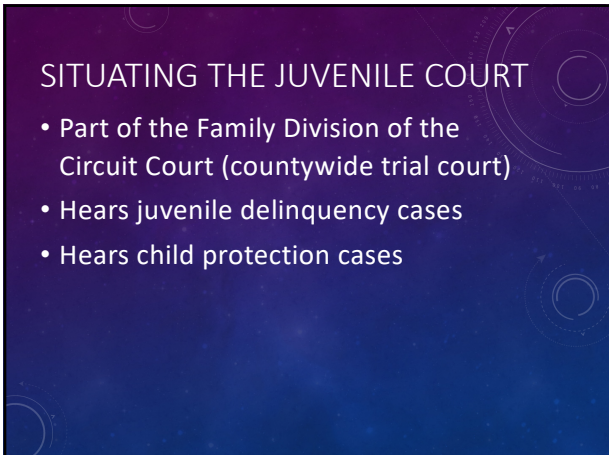
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COURT USES THE ADVERSARY SYSTEM

- Definition
- Assumes equality of resources and preparation
- Why it works
- Why it doesn't
- Why it can be painful

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LEGAL ETHICS

- "An effective lawyer must do everything on behalf of his client that is not forbidden by the law or the rules of the legal profession. But a good person should always be uncomfortable about doing anything that does not meet his or her personal standards of morality... If you are a decent and thinking person, you will never grow entirely comfortable with some of the tactics you will be required to employ as an effective and ethical lawyer."
- Harvard Law Professor Alan Dershowitz

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LEGAL ETHICS

- Designed to make the adversary system work
- Loyalty loyalty loyalty... did I mention loyalty?
 - Who's the client?
 - Singular duty to client.
- *Zealous advocacy*
- Counselor and advisor

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WHAT FOLLOWS FROM LEGAL ETHICS?

- Often, at least one of the lawyers will be opposed to your testimony/recommendations.
 - And it's their job to oppose you vigorously.
 - They look to poke holes in your credibility, methods, recommendations, etc.
- Lawyers must find any legal, ethical way possible to advance their client's interests.
- Lawyers are careful in their communications.
 - Will only be open if it will advance their client's case.
 - Will not lie, but will not necessarily tell you everything.

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IN CHILD WELFARE...

- Tendency to think that everyone is working for the best interests of the child. As a legal matter... Wrong!
- Yet if adversary system works, the case should be decided in the best interests of the child. Why?
 - Enough information to make a good decision.
 - Much of child welfare law, when applied properly in a well-reasoned way, is geared to the best interests of the child.
 - That includes a decision in favor of the parent.

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HOW NON-LAWYER PROFESSIONALS FIT INTO THE LEGAL SYSTEM

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YOUR ROLE IN THE LEGAL SYSTEM

- Providing information to lawyers and other parties.
- Providing information to help the court (judge/jury) make decisions.
- Ways of providing that information
 - Testimony
 - Written reports
- Your superpower
 - Doing thorough, ethical work that meets the applicable standards of practice. Work you can be proud of.

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WHAT YOU CAN DO IN THE LEGAL SYSTEM

- Provide skilled, detailed, hands-on observation, assessment, and treatment.
- Provide accurate, complete consultation within your scope of practice.
- Being a fact witness
- Being an expert witness
 - Assist court in understanding the case
 - Help court to determine a fact in question (e.g., nature and impact of disability; recommended services to address needs of a party)

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DON'T BE AFRAID TO TAKE A POSITION

- Go into case as objective as you can be.
- As you draw conclusions, be prepared to report those conclusions and back them up with facts and theory.
 - Be able to demonstrate/explain how you know what you claim to know.
- Know what you want to say.
- Don't easily get swayed from your position.

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WHAT IF YOU HAVE CONCERNS?

- Let's say the child is in foster care, and you have concerns about the placement, the child's well-being, etc. What do you do?
- Obviously, if you suspect abuse or neglect, contact the foster care worker and CPS. Make a report.
- Otherwise, here's the chain of command:
 1. Foster care worker (DHHS or private agency)
 2. Supervisor (DHHS or private agency)
 3. DHHS monitor (if FC worker is at private agency), then monitor's supervisor.
 4. Child welfare section head (within DHHS office)
 5. DHHS county director
 6. DHHS child welfare director (Lansing)
 7. Other resources: LGAL, Office of Children's Ombudsman

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COMMUNICATING EFFECTIVELY IN AND OUT OF COURT

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BASIC TIPS

- Be straightforward.
- No jargon. If you use a technical term, define it.
- Be confident in what you've done in the case. Remember, the court and the lawyers don't know what you know. They are not the experts. You are.

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PRESENTING YOUR POSITION

- All written reports and oral testimony should be:
 - Clear
 - Concise
 - Precise and accurate
 - Specific, detailed, and descriptive
 - Informative (educate the court!)
 - Easy to understand
 - Supported by data, best practices, etc.

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WRITTEN REPORTS

- Write well
 - Grammar, typos, clarity, etc. Edit!
- Avoid jargon
 - If you must use it, define it.
 - Write so that the average parent would understand it.
- Read your reports with a critical eye. Have a colleague do so, too. What questions might someone have?

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TESTIFYING IN COURT

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TYPES OF HEARINGS

- Adjudication and TPR
 - Formal testimony, sworn as witness, mostly the lawyers asking questions.
- Disposition, Dispositional Reviews, and Permanency Planning Hearings
 - Might be sworn in (varies by court)
 - Might give a “report”
 - Then might be asked questions by lawyers or court

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TYPES OF WITNESSES

Fact Witnesses

- Testify only to facts (not opinion)
- Facts must be personally known to witness

Expert Witnesses

- Called specifically to educate the court/jury
- Must have qualifications established
- Can testify about opinion
- May be asked hypotheticals

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EXPERT QUALIFICATIONS AND CONSIDERATIONS

- Qualified as an expert based on knowledge, skill, experience, training, or education.
 - Process of qualification: “voir dire.”
- Base opinions on sufficient facts/data that are the product of reliable principles and methods.
- Expert needs to have applied the principles and methods reliably to the facts of the case.

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MORE ABOUT EXPERTS

- May give opinion regarding the ultimate issue in the case.
- Exception:
 - Cannot say child *was* sexually abused or is telling truth about sexual abuse.
 - However, may testify about unique or specific behaviors that child exhibits, such as behavior being consistent with what children show after sexual abuse.

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PROCEDURAL BASICS

- You can be subpoenaed as a witness, which compels you to appear and testify.
 - If subpoenaed, you may want to contact your organization's lawyer.
 - After talking with your organization's lawyer, contact the lawyer who subpoenaed you (assuming this is consistent with what your lawyer advises).
- A lawyer will call you to the witness stand. You'll be sworn in.
- The lawyer who called you as a witness will ask you questions (Direct Exam)
- Then the other lawyers will ask you questions (Cross-Exam)
- The judge might ask some questions, too.
- The lawyer who called you as a witness may then ask a few more questions (re-direct)

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PREPARING FOR COURT

- Your goal is to build credibility with the judge/jury.
 - Your input is VALUABLE! Never forget that!
- Dress professionally and conservatively.
- Best to meet with or at least talk to the lawyer who's calling you as a witness.
 - To prepare your testimony
 - Ask what the lawyer thinks the other side's plan is for the case.

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MORE PREPARATION

- Review your file very carefully.
 - Know the basics cold.
 - Be self-critical. Are there any weak points?
- Perhaps create a sheet of notes if doing so will help.
 - *Be aware that if you do so and take it to the stand with you, the other lawyers can see it if they want!*
- Take your file with you as a back-up.
- The best preparation is doing good work in the first place
 - Be careful, thorough, and scrupulous in your work, and follow your profession's standards of practice.

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GENERAL TIPS FOR TESTIMONY

- Listen *carefully* to questions.
- Answer what's asked.
- If there's an objection, just sit quietly and wait for it to play out.
- Be entirely truthful. Don't shade/stretch your facts at all.
 - Recognize the limitations of your knowledge and work.
- "I don't know" is a fine answer if you don't know.
- Don't remember? Say so! Your recollection can be refreshed.
- Be able to explain your basic methods, observations, assessments, etc.
 - Why you did it, what it tells you.

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MORE TIPS

- Use details and examples to tell the story that you want to tell.
- Stay calm and professional.
- If you stay calm and the lawyer is a jerk, that lawyer loses credibility, and credibility is key.
- If you're getting bullied, stay calm and slow things down. Ask for clarification of questions. Break the lawyer's rhythm.

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DIRECT EXAM

- Done by lawyer that called you as witness.
- May use open-ended or yes/no questions, but may not use leading questions.
- The direct exam is your chance to tell the story. A good direct lets you shine as a witness.
- Answer what's asked.
- Don't use jargon. Plain English!

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CROSS-EXAM

- Done by the other lawyer(s).
- Leading questions. What are those?
- Lawyer is trying to tell the story s/he wants to tell using the questions, and wants you to agree.
- Lawyer wants to control you.
- *Answer only what's asked. Don't elaborate in response to a leading question*
- But if a lawyer lapses and asks an open-ended question, say what you want to say

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SOME ADDITIONAL POINTS

- A good cross-exam can be disheartening for the witness.
- But realize that judges see through a lot of what lawyers do.
- Re-direct may make you feel better.
- Few lawyers are all that good at cross. Take the opportunity to clarify or make a point.
- Cross-exam is used to test your facts. Solid facts hold up well.

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DEPOSITIONS

- Part of discovery (investigation of case by lawyer).
- Similar to testifying in court, but tends to be wider scope of inquiry because it's investigative.
- Occurs in an office, hotel conference room, etc.
- Lawyers will object to certain questions, but you generally will answer those questions anyway.
 - Objections are to preserve certain legal rights.

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LESS FORMAL HEARINGS

- Many hearings in child welfare.
 - Disposition, Dispositional Review, Permanency Planning, Post-Termination Review.
- Often, caseworkers and mental health professionals "report" to the court.
 - May be some questions. Usually few.
- Lawyers make requests of court. May present legal arguments.
- Often very quick hearings. Don't blink, or you'll miss it.

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LESS FORMAL HEARINGS

- If you have something to say, get heard! Make an impact!
 - Talk to worker at courthouse or in advance.
 - Contact LGAL.
- Be ready to talk and make recommendations.
 - And back those up with why you made them.
 - Think about leading with your conclusion/recommendation, then circle around to how/why you got there.
- Be prepared to assert yourself.

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LESS FORMAL HEARINGS

- Keep it short and to-the-point, yet don't rush. Be thorough and include enough detail to support your point.
- You know these cases very well – often better than anyone else there. Use that advantage to get the court to do what you want it to do!
- What you have to say is very important. Be confident. The court needs and probably wants to hear from you.

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QUESTIONS?
I MIGHT HAVE ANSWERS!

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