

SOCIAL WORKERS AND OTHER HELPING PROFESSIONALS AS WITNESSES AT COURT



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PRESENTERS:

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DISCLAIMERS

- ▶ This presentation provides limited and general information.
- ▶ **It is not legal advice.**
- ▶ It is not meant to replace any agency policies or protocols.
- ▶ Refer to your agency's policies and contact your attorney and/or supervisor about your specific questions and issues.

MORE DISCLAIMERS

- ▶ This information is based on non-jury hearings in civil matters heard in Tennessee state courts. Rules and procedures will vary from court to court and judge to judge.
- ▶ There are also differences between court and administrative hearings, between civil and criminal matters, between state and federal courts, and between jury and non-jury trials.

LEARNING OBJECTIVES

- ▶ What to look for on the subpoena
- ▶ Whether or not you have to testify
- ▶ What to bring
- ▶ How to communicate with the attorney who subpoenaed you
- ▶ What to expect at court
- ▶ What to do and what not to do while testifying
- ▶ The difference between fact and opinion witnesses
- ▶ How to become qualified as an expert witness

QUESTIONS FOR YOU

- ▶ Been asked or subpoenaed to testify?
- ▶ Court or administrative hearing?
- ▶ What type of court?
- ▶ Deposition?
- ▶ What type of cases?
- ▶ Try to get out of testifying?
- ▶ Successful?
- ▶ Anyone prep you for testifying?
- ▶ How did you feel about testifying?

DO I HAVE TO TESTIFY??



PRIVILEGE AND CONFIDENTIALITY

- ▶ Is he your client?
- ▶ Was the communication privileged?
- ▶ Has a privilege been waived?
- ▶ Who subpoenaed you?
 - ▶ If it was your client or client's attorney, does your client need to sign a release?
 - ▶ If it was someone else, talk to your attorney or supervisor!

SPECIAL SITUATIONS

- ▶ Minor and disabled adult clients
- ▶ Deceased clients
- ▶ Protected records

THE SUBPOENA

- ▶ Which attorney has asked the court to issue the subpoena?
- ▶ Who does that attorney represent?
- ▶ How do you reach the attorney?
- ▶ When is the hearing?
- ▶ Do you have to bring anything?



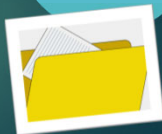
COMMUNICATION

- ▶ If possible, talk to the attorney who subpoenaed you.
- ▶ Ask questions.
- ▶ Request that you waste as little time at court as possible.
- ▶ Confirm the hearing date and time again.



BEFORE THE HEARING

- ▶ Review your file.
- ▶ Review your profession's ethics rules.
- ▶ Review applicable standards for your profession.
- ▶ Review your applicable agency policies.
- ▶ Review applicable research and assessment tools.



WHAT TO EXPECT AT COURT




WHO MIGHT BE THERE

- ▶ The parties
- ▶ The child(ren)
- ▶ The judge
- ▶ The attorney(s) who subpoenaed you
- ▶ The opposing attorney(s)
- ▶ The court reporter
- ▶ Other witnesses
- ▶ Court officers
- ▶ Court clerk
- ▶ People from other cases

HOW LONG IT WILL TAKE?

- ▶ It depends!
- ▶ Cases that settle or are continued
- ▶ Cases that are specially set
- ▶ Cases on a regular docket



WHAT TO WEAR

- ▶ Dress neatly and conservatively, as if you are going to a professional job interview, a funeral, or a formal religious service.
- ▶ Do not wear shorts.
- ▶ Do not wear clothing with pictures or words.
- ▶ Ladies, do not wear very high heels, very short skirts, low cut tops, a lot of jewelry, or a lot of makeup.
- ▶ Men, do not wear hats. Also, tuck in shirts.



WHAT TO BRING

- ▶ Anything listed on the subpoena (unless the judge says you don't have to bring it)
- ▶ Reading material
- ▶ Snacks
- ▶ Medication
- ▶ Do not bring a cell phone unless you are sure you can get it through security. If you bring it, silence it!
- ▶ Do not bring your child(ren) unless they are the subject of the hearing and/or are testifying.

COURTHOUSE SECURITY

- ▶ Will vary from courthouse to courthouse.
- ▶ Can take time to get through a metal detector if a lot of people arrive at the same time.
- ▶ Leave cell phones, purses and bags in the car.
- ▶ Do not bring any pepper spray, mace, sharp objects, or weapons with you. They will be taken from you by courthouse security.

TESTIFYING

- ▶ The oath
- ▶ Direct examination
- ▶ Cross examination
- ▶ Questions from the judge



TESTIFYING - WHAT TO DO

- ▶ **Always, always tell the truth.**
- ▶ Be polite to everyone.
- ▶ Address the judge as "Your Honor," "Judge _____," or if s/he is a Magistrate, "Magistrate _____."
- ▶ Address the attorneys and/or parties who ask you questions as "sir" and "Mr. _____" or "m' am" and "Ms. _____."



TESTIFYING - WHAT TO DO

- ▶ Keep your hands away from your mouth and face while you are testifying.
- ▶ Answer orally (not just with a nod or shake of the head) so that the court reporter and/or the voice recorder(s) can record your answer.
- ▶ Speak loudly enough for everyone to hear you.

TESTIFYING - WHAT TO DO

- ▶ If an attorney objects to a question, stop talking. If the judge overrules the objection, then you can finish your answer. If the judge sustains the objection, then you cannot answer the question (at least not how it was asked or not in the way you started to answer).
- ▶ If you feel upset or ill, or if you need to visit the restroom during your testimony, let the judge know that you need a moment or a break.

TESTIFYING - WHAT TO DO

- ▶ Make sure you correctly heard and understood the question before answering it.
- ▶ If you don't hear a question, ask for it to be repeated.
- ▶ If you don't understand a question, request that it be asked a different way.
- ▶ If you don't know the answer to a question, just say that you don't know (rather than guessing).
- ▶ If you don't remember the answer to a question, just say that you don't remember (rather than guessing).

TESTIFYING - WHAT TO DO

- ▶ If you are estimating a date, time, distance, number, etc, then say that it is an estimate.
- ▶ If you need to explain an answer, say so, and then give the explanation.
- ▶ Stop talking after you have fully answered a question, and wait for the next question (rather than volunteering information that was not requested).

WHAT NOT TO DO

- ▶ Don't say anything that isn't true.
- ▶ Don't talk to other witnesses about the case.
- ▶ Don't memorize your testimony.

WHAT NOT TO DO

- ▶ If a hearing is going on, don't talk to anyone while you're in the audience.
- ▶ If you are in the audience or sitting at the attorney's table, don't nod or shake your head, or engage in other non-verbal communication, in response to something someone else says during a hearing.

WHAT NOT TO DO

- ▶ Don't take anything to the witness stand (like notes) that you don't want examined by the attorneys and judge.
- ▶ Don't mislead the judge and attorneys by saying something that is technically true but that you know will make them think you meant something that isn't true.

WHAT NOT TO DO

- ▶ Generally, don't volunteer information while testifying (just answer fully and then stop talking).
- ▶ Don't guess while testifying.
- ▶ Don't make jokes while testifying.

WHAT NOT TO DO

- ▶ Don't be sarcastic or flippanant while testifying.
- ▶ Don't show anger, frustration, or irritation while testifying.
- ▶ Don't interrupt the attorneys or judge.

WHAT NOT TO DO

- ▶ Don't use pronouns (use names).
- ▶ Don't anticipate objections (i.e. "I can't answer that question because it'd be hearsay.")
- ▶ Don't chew gum while testifying.
- ▶ Don't wear sunglasses while testifying.

WHAT WILL MY ROLE BE ?

- ▶ Fact witness?
- ▶ Expert opinion witness?
- ▶ Both?



FACT WITNESSES

- ▶ Must have first hand knowledge
- ▶ Testimony is about what you saw, what you heard, what you smelled, etc.
- ▶ Who, what, when, and where

Layperson Opinions

- ▶ Facts must be within range of knowledge or understanding of an ordinary person.
- ▶ Examples:
 - ▶ "She is a loving mother."
 - ▶ "The car was moving very fast."
 - ▶ "The injury looked like a cigarette burn."
 - ▶ "He seemed to be drunk."
 - ▶ "She looked scared."

EXPERT WITNESSES

- ▶ Must be qualified by the judge as an expert
- ▶ Provide a professional opinion in an area of the witness' expertise

FACT OR OPINION?

- ▶ I began seeing Mary for counseling in April of last year.
- ▶ Mary told me she has been diagnosed with depression.
- ▶ Mary is suffering from major depression.

FACT OR OPINION?

- ▶ Mary stopped talking when her husband arrived.
- ▶ Mary had a small red mark on her wrist.
- ▶ The mark on Mary's wrist looked like a cigarette burn.
- ▶ The bruise looked like a handprint.

FACT OR OPINION?

- That note is written in my supervisor's handwriting.

QUALIFICATION AS AN EXPERT

- ▶ Experts become qualified by their knowledge, skill, experience, training, or education.
- ▶ Provide your resume or curriculum vitae to the attorney prior to the hearing.

WHAT ARE YOUR AREAS OF EXPERTISE?

QUALIFICATION AS AN EXPERT

- ▶ Answer questions about yourself
 - ▶ Education
 - ▶ Professional licenses and certifications
 - ▶ Professional work history
 - ▶ Professional training received and provided (topics and hours)
 - ▶ Number of clients

YOUR EXPERT OPINION

- ▶ Admissibility
 - ▶ Methodology?
 - ▶ Peer review of publication?
 - ▶ Methodology generally accepted?
 - ▶ Potential rate of error?
 - ▶ Independent of litigation?

YOUR EXPERT OPINION

- ▶ Basis of your opinion
 - ▶ Information may become known before or during hearing.
 - ▶ Facts or data must be the type reasonably relied upon.
 - ▶ Facts or data must be trustworthy.
- ▶ If not based on personal observation, may need to testify based on hypothetical questions.

THE QUESTION

- ▶ Is your opinion within a reasonable degree of _____ certainty, based upon your education, training, and experience?



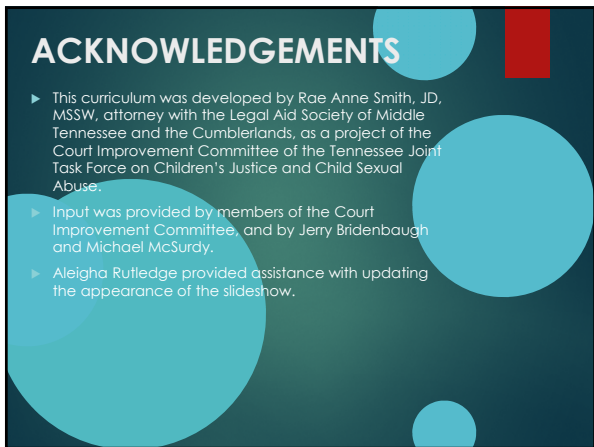
DEMONSTRATION

THE WILLIAMS FAMILY'S WITNESS

- ▶ Qualification
- ▶ Direct examination
- ▶ Cross-examination







The Tennessee Joint Task Force on Children's Justice and Child Sexual Abuse

- ▶ In 1985, the Tennessee General Assembly passed legislation bringing together professionals from the social work field, mental health services, law enforcement, the criminal court system to combat the problem of child sexual abuse. This comprehensive law also created the Child Sexual Abuse Task Force to assist with the implementation of Public Chapter 478 and to evaluate the results of this implementation, producing a State Plan that encompasses detection, intervention, prevention, and the treatment of child sexual abuse (T.C.A. 37-1-603).
- ▶ In 1993, membership of this multidisciplinary task force was expanded to include individuals with experience in civil court, defense of the accused, CASA, and parent groups. The role of the task force was expanded to review the civil and criminal justice system's handling of child abuse and neglect cases, cases involving suspected child maltreatment-related fatalities, and cases involving a potential combination of jurisdictions, such as interstate Federal-State and State Tribal. The role of the task force also changed to include making policy and training recommendations in each of the three Children's Justice Act grant categories described in Section 109 (e) of CAPTA, and the name Tennessee Children's Justice Task Force (TCJTF) was adopted.

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