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**ROLE OF JUVENILE COURTS
AND HOW THEY SAFEGUARD
PARENTAL RIGHTS**

REPRESENTATION IMPROVEMENT PROJECT FOR THE PROMOTION OF LEGAL EXCELLENCE
Parent Representation Skills Training
December 9, 2022




Overview of Child Dependency Law

- Adoption Assistance & Child Welfare Act of 1980
 - Contrary to the welfare of the child/society to remove from the home.
 - Reasonable Efforts to prevent removal and to reunify
 - Set up reviews by the court or FCRB
- Adoptions & Safe Family Act of 1997
 - Safety and health are paramount concerns – exceptions to reasonable efforts to prevent/reunify include aggravated circumstances.
 - Foster care is temporary. Must use reasonable efforts to find another permanent placement.




Role of Juvenile Court in D&N Cases

- Decision-making
- Provide constitutional safeguards
- Monitor the progress of the child toward permanency.
 - ❖ Participation in FCRBs.




Juvenile Court Constitutional Safeguards

- Due Process
 - ❖ Notice of all hearings
 - ❖ Opportunity to be heard
 - ❖ Prohibition against ex parte communication
- Right to an attorney
 - ❖ Parents right to counsel throughout the case.
 - ❖ All children in D&N case shall have GAL.
 - ❖ Judge may also appoint Attorney ad Litem.



2 Distinct Issues of Child Dependency Cases

1. Adjudicatory (trial) Issue: Was the child abused or neglected (consistent with the statutory definitions)?
2. Dispositional (permanency) Issue: Does the permanency plan adequately address the child's best interests in terms of safety, health and permanency?



Paramount Concern = Best Interest of the Child


SAFETY

HEALTH
Physical
Mental
Dental
Emotional
Educational
Spiritual
Social

PERMANENCY
Reunification
Family Placement
Adoption
Emancipation
Permanent Foster Care


Reasonable Efforts

- Reasonable efforts is defined as “the exercise of reasonable care and diligence by the Department to provide services related to meeting the needs of the child and the family.” T.C.A. § 37-1-16(g)
- Department is charged with reasonable efforts to:
 1. prevent removal of child from home;
 2. reunify family; and
 3. achieve another permanency goal as identified in the permanency plan



Reasonable Efforts


- Reasonable efforts must be:
 1. Reasonably timely;
 2. Reasonable in scope - Match the level of significance given to the parent's responsibilities;
 3. Reasonably related to the circumstances that brought the child into custody or that prevents the child from safely returning home;
 4. Reasonably adaptive to parent's or child's needs and
 5. Reasonably tailored to the family's unique circumstances.



Visitation Considerations


Continued, consistent, high quality visitation is one of the best predictors of successful reunification between a parent and child.

- Face to face visits between the child and parents/care providers and child and siblings (if not placed in same foster home) organized around activities that reflect the routine activities of the family;
- Supervision of visits: Unsupervised visits whenever possible or progress through reduced supervision;
- Frequency and length of visits: Visitation as frequent and long as possible, increasing frequency; and
- Location of visits: Visits to occur in child friendly places conducive to parent/child interaction and engagement.



**TENNESSEE JUVENILE LAW
UPDATE**

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In Re: Mattie L., (Tenn. Feb. 5, 2021)

Facts: TPR filed alleging abandonment. Father was not able to attend trial due to incarceration; however, his attorney stated “I absolutely believe we can proceed without him.” After six days of trial, the trial court applied the missing witness rule finding that had father been present, his testimony would have been unfavorable. Trial court also applied the unclean hands doctrine finding father could not obtain any relief because he lied in discovery.

Holding: Missing Witness Rule applies in bench trials. Therefore, cannot be a presumption, but instead a permissive inference.

How Does This Apply to Your Practice?
Think twice before advising clients to not show up for trial.



In re Kierani C., (Tenn. Ct. App. Sept. 3, 2021)

Facts: TPR filed against putative father and father filed petition to establish parentage. After TPR was filed, putative father began to take action to establish relationship. Trial court granted TPR based upon abandonment under 36-1-113(g)(9)(A).

Holding: Reversed on ground of abandonment by putative father and found putative father may repent his failure to pay prior to the filing of the TPR by making payments now.

How Does This Apply to Your Practice?

Advise putative father to begin making payments immediately.



In re Analesia Q., (Tenn. Ct. App. May 10, 2022)

Facts: DCS files TPR against father alleging abandonment and severe abuse. Severe abuse is based upon disclosures of child to foster mother. Trial court terminates on all grounds and father appeals.

Holding: Ruling upheld. Decision to admit child's disclosure is discretionary. Rule requires circumstances of disclosure to indicate trustworthiness.

How Does This Apply to Your Practice?

In this case, the child made disclosures only to the foster parents and did not make any disclosures during the forensic interview. Without more, this may not have come in.



In re Lucas H., (Tenn. Ct. App. May 26, 2021)

Facts: GAL in D/N files motion to compel mother to release mental health records. Juvenile Court enters order compelling mother to release records claiming privilege is waived under T.C.A. 37-1-411 (waiver of privilege in abuse cases).

Holding: GALs are not entitled to mental health records of parents if the D/N is filed by a private party and not DCS

How Does This Apply to Your Practice?

Client's mental health records are privileged pursuant to T.C.A. 24-1-207 (psychiatrist) and T.C.A. 63-11-213 (psychologist) if the petition is not filed by DCS.



In re Khalil J., (Tenn. Ct. App. May 16, 2022)

Facts: Mother with long history with DCS gives birth to child. DCS receives referral alleging lack of supervision. Court is contacted by DCS who enters "Non-Exigent Removal and Custody Order," whereupon child is removed and DCS files initial petition two days later. Three years later, the TPR is tried and juvenile court finds persistence of conditions.

Holding: If the removal is based upon the court's own order and not a petition filed by DCS, the ground of persistence of conditions cannot be used in a TPR.

How Does This Apply to Your Practice?

If removal was based solely upon a Court Order and not a petition, persistence of condition as a ground is defeated. You must review the initial pleadings used to enter the child into custody.



In re Crystal W., (Tenn. Ct. App. Jan 21, 2021)

Facts: D/N petition filed by father and DCS alleging mental health issues of mother. Juvenile Court finds D/N and mother appeals to Circuit. Circuit Court conducts de novo appeal and makes similar findings based upon the fact that mom cannot accept that she has mental health issues.

Holding: This is the most recent case to cite *Green v. Green*, 2009 Tenn. App. LEXIS 69 (Tenn. Ct. App. Feb. 11, 2009). Even with de novo appeal, client could not erase her behaviors because they were continuing.

How Does This Apply to Your Practice?

This is a bad case for the Green defense. It shows that some issues may not be resolvable on appeal.



Rothbauer v. Sheltroun, (Tenn. Ct. App. March 10, 2021)

Facts: Father petitioned court to change child's last name because the child was the last of his lineage. Mother testified that the people in the community knew the child by her last name. Trial court denied father's petition; however, trial court did not include best interest analysis. Court of Appeals reversed and remanded.

Holding: Best interest analysis must be included in final Order pursuant to Tenn. R. Civ. P. 52.01.

How Does This Apply to Your Practice?

You must review the final order submitted by the trial court. This is the most common reason for reversal in juvenile court matters.



In re Kansas B., (Tenn. Ct. App. October 12, 2022)

Facts: 17 yr old daughter sexually abused by stepfather. Stepfather sought to call daughter as witness during trial but trial court denied request upon balancing the probative value of the child's testimony with the potential emotional and psychological harm.

Holding: Remand to court for court to permit stepfather to call child as a witness and for the court to hear and consider such testimony, provided that the court determines child competent to testify and does not exclude the evidence pursuant to Rule 403. The trial court should consider and implement any accommodations delineated in Juvenile Rule 306 if child is permitted to testify.

How Does This Apply to Your Practice?

Utilize Juv. Rules as protection for minor witnesses rather than excluding these witness' testimony if beneficial to your clients.



TCA § 36-6-106(a)

- Amended to add new best interest factor for child custody:
- Tenn. Code Ann. 36-6-106(a), is amended by adding the following for a new subdivision: Whether a parent has failed to pay court-ordered child support for a period of three (3) years or more?

How Does This Apply to Your Practice?

Advise your clients to review child support payments when looking at modification of child custody orders and/or include this factor in your best interest argument.



TCA § 37-5-132 (a)

- Amended by adding the language "to be calculated at least monthly" after the language "average"
- Each DCS worker must report their average caseload on a monthly basis.

How Does This Apply to Your Practice?

Ask for report of DCS case manager's caseload report either with informal discovery or formal discovery. Utilize in report in your Reasonable Efforts argument.



TCA § 37-1-406(e)(1)

- Amended TCA 37-1-406(e)(1) - if a report of harm was made to the Department anonymously, then the juvenile court shall not order the parents or person responsible for the care of the child or the person in charge of any place where a child may be, to allow the Department entrance for the purposes of interview, examination, and investigation unless the department has presented evidence corroborating the anonymous report of harm.

How Does This Apply to Your Practice?

Referrals remain anonymous; however, parents have their day in court before they must give DCS permission to enter their home based on an anonymous report of harm.



**STANDARDS OF PRACTICE FOR
ATTORNEYS REPRESENTING
PARENTS IN DEPENDENCY
AND NEGLECT CASES**

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Parent Representation in D&N Matters

- The adversarial nature of the legal system presumes disagreements can be resolved by a neutral arbiter, after hearing facts and legal arguments presented by opposing parties within a formal framework of evidentiary and procedural rules. ***Child welfare proceedings, in contrast, are often characterized as more informal or collaborative.***
- While there may be instances where clients' goals can be achieved through negotiation and cooperation, attorneys for parents must remember their ethical duties are to their clients in an adversarial system, including their professional obligations of competency and diligence.



Legal Advocacy

Diligently pursue clients' case goals and, as needed and when consistent with client's interests and objectives, proactively drive the case forward:

1. Develop a case theory and legal strategy for adjudication, and advance other client objectives and issues that support case goals (e.g., litigation to increase visitation).
2. Engage in proactive case planning, develop and propose a case plan, identify service providers, and set a visitation schedule (if family maintenance or immediate family reunification is not possible).
3. Litigate issues and use experts, as needed, to achieve clients' case goals, including through active motion practice throughout proceedings, not only at statutorily set periodic review dates.



Legal Advocacy

4. Present evidence of reasonable efforts or lack of same.
5. Request court orders for specific services that your client needs.
6. Offer to prepare order/findings of fact.
7. Attend permanency plan staffings and review perm plan orders so you and your client can prepare for permanency hearings.
8. Attend court reviews and foster care review board hearings.
9. Advocate for the client's goals and empower the client to direct the representation and make informed decisions based on thorough counsel.



Out of Court Advocacy

- Engage with and know your clients.
 - Understand trauma and client's specific trauma history including:
 - ❖ How client's trauma history impacts their experience with child welfare system and ability to engage in child welfare services; and
 - ❖ How trauma impacts the attorney/client relationship.
 - Focus on the perspective of your client understand your client's goals and pursue them vigorously. (i.e. to seek treatment, to defend/deny allegations, to seek visitation, to keep children home with plan, to find relative placement, to surrender for adoption, etc.)



Out of Court Advocacy

- Meet and communicate regularly with client and well before any and all court hearings and meetings.
- Explain to your clients the legal process and their right and the consequences of not attending all court hearings.
- Counsel clients about all legal matters related to the case, including the allegations related to dependency, the proposed service plan, and the client's rights in the pending proceedings.
- Research applicable legal issues and legal arguments.



Out of Court Advocacy

- Approach cases with a sense of urgency with an immediate focus on:
 1. Placement arrangements that support child's connection to family, siblings, education, language and culture (including in-home placement, with relatives, neighbors and fictive kin/close family friends);
 2. Visiting arrangements that, consistent with child safety, are: unsupervised whenever possible in child friendly places conducive to parent/child interaction and engagement, as frequent and long as possible, organized around activities that reflect the routine activities of the family, and progress through reduced supervision and increased frequency; and
 3. Services that appropriately address client's strengths & needs.



Out of Court Advocacy

- Conduct a thorough and independent investigation at every stage of the proceeding. This should include obtaining and reviewing on an ongoing basis and to the extent allowable under state law (including via subpoena, discovery, or court order), child welfare agency records, service provider records, and all other relevant records for parents and children, including medical and education records.
- Engage in case planning and advocate for appropriate social services and visitation using a multidisciplinary approach to representation, on an ongoing basis.
- Maintain attorney client privilege while being cognizant of mandatory reporting laws if made aware of potential future harm to others.



Out of Court Advocacy

- Explain to your client what decision-making authority remains with the parent and what lies with the child welfare agency while the child is in foster care.
- Seek updates and reports from any service provider working with the child/family or help the client obtain information about the child's safety, health, education and well-being when the client desires.
- Where decision-making rights remain, assist the parent in exercising his/her rights to continue to make decisions regarding the child's medical, mental health and educational services. If necessary, intervene with the child welfare agency, provider agencies, medical providers and school to ensure the parent has decision-making opportunities. This may include seeking court orders when the parent has been left out of important decisions about the child.



SCOPE OF REPRESENTATION OF PARENT'S ATTORNEYS

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Scope of Representation

- Parent's attorneys need to be clear as to their scope of representation from the beginning.
- Communicate with client in a clear and precise manner in terms that they understand sufficiently in advance of all hearings and meetings.
- Practice mindfulness – paying attention in a particular way; on purpose; in the present moment; and non-judgmentally.
- Be mindful that parents often feel disempowered in child welfare proceedings and take steps to make your client feel comfortable expressing goals and wishes without fear of judgment.



Scope of Representation

- Clearly explain the legal issues as well as expectations of the court and DCS, and potential consequences of your client failing to meet those expectations.
- You have the responsibility to provide expertise, and to make strategic decisions about the best ways to achieve the parent's goals, but your client is in charge of deciding the case goals and you must act accordingly.
- Continue with the case until you are relieved by court order.



**Motivational Interviewing =
Compassionate Conversation**



**HOW DO YOU LISTEN IN A WAY THAT YOUR CLIENT
WILL TALK... AND HOW DO YOU TALK IN A WAY
THAT YOUR CLIENT WILL LISTEN?**

-Malcom Steve Berg Smith



Rule 1.4 Communication

- (a) A lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in RPC 1.0(e), is required by these Rules;
 - (2) **reasonably consult with the client about the means by which the client's objectives are to be accomplished;**
 - (3) keep the client reasonably informed about the status of the matter;
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

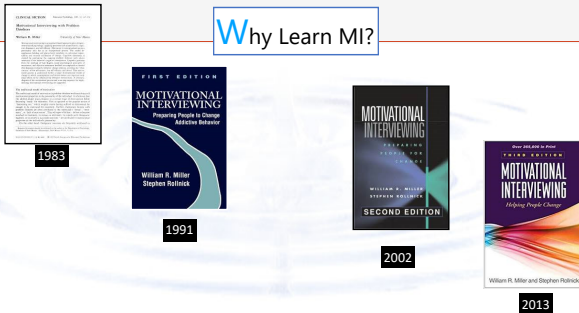


Rule 2.1 Advisor

Comment [2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.



Why Learn MI?



TEACHING MI TO LAY PEOPLE

Evidence & efficacy

No correlation between years of education & learning MI

Thomas Gordon's Effective Parenting (1970)

35 Controlled effective studies with teaching parents MI

Peer delivered interventions with MI and MI in combination

Peer mentor training/ Peer support workers/Recovery coaches/ Peer outreach



Photo credit: Chris and Heidi D'11482019 from Shutterstock, collected 8/2021

Christensen, A. Miller, W.R., & Muñoz, R.F. (1978) Paraprofessionals, partners, peers, paraphernalia and print: Expanding mental health service delivery. *Professional Psychology 9* (249-270)

MI is a particular way of having a conversation about change so that it is the client rather than the clinician who voices the arguments for the change.

-Miller & Rollnick (2013)



WHAT IS MOTIVATIONAL INTERVIEWING

Spirit + Skills + Client signals (Verbal and NON verbal) + Helper choices

A Conversation

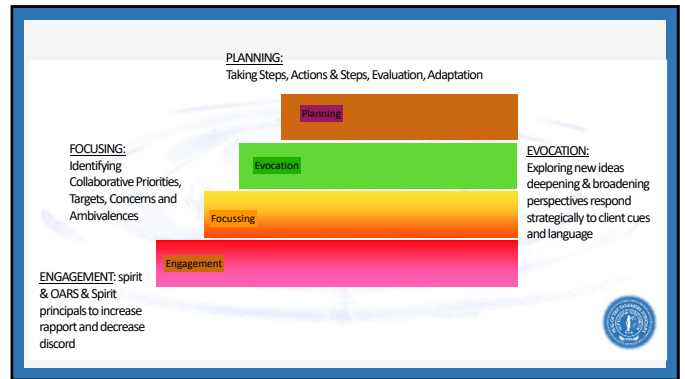
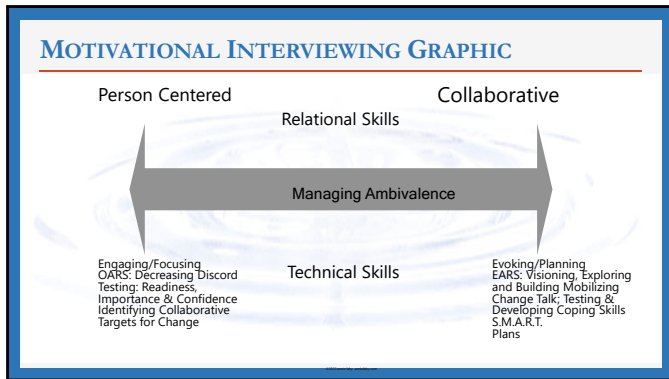
It's a philosophy of care (SPIRIT): Compassion, Acceptance, Partnership, Empowerment

It's a set of communication styles and skills like a dance that you can adapt to role setting and tasks

Open Questions/evocative questions, Affirmations, Reflections, Summaries (More reflections less questions)

It's a set of response strategies (decision rules based on client language and signals) and a power-sharing method of offering feedback, suggestions and finding the plan with the client.





Ask open questions

EXPLORE PROVIDE EXPLORE

Skillful advice (E-P-E)

What do you already know about _____ ?

- When it comes to _____, what would be most helpful to know more about?
- What have you already heard about _____ ?

MOST IMPORTANT: What do you think about what I shared?

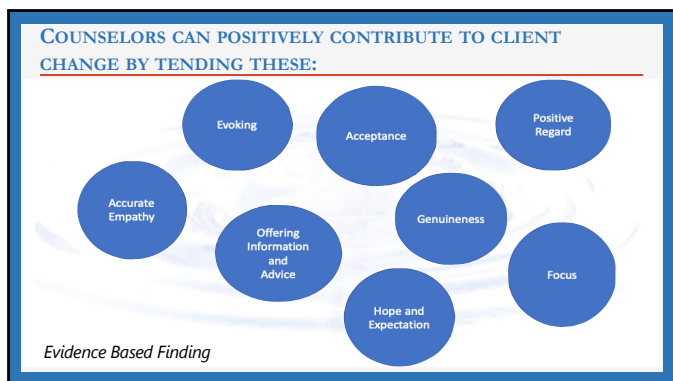
SOLVE DISCORD

DANCING NOT WRESTLING

Listen
Reflect
Understand
Find accurate understanding

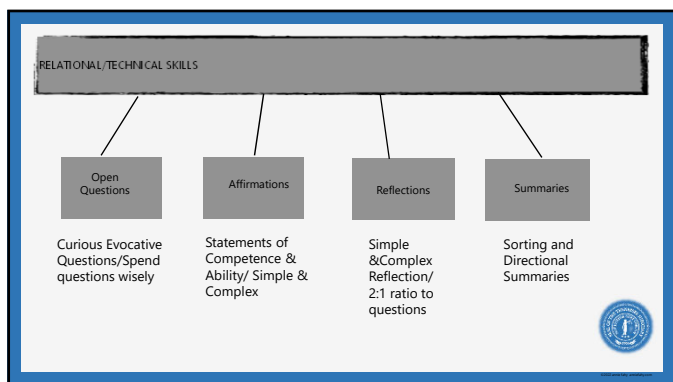
Confront
Persuade
Advice
Expert Stance

MI Non-Adherent Behaviors



Directing	Guiding	Following
Authorize	Awaken	Allow
Command	Collaborate	Be With
Determine	Elicit	Comprehend
Manage	Evoke	Empathize
Order	Encourage	Grasp
Prescribe	Inspire	Listen
Tell	Motivate	Understand
Advise	Offer	Value

Motivational Interviewing Blends Three Basic Interpersonal Styles



AFFIRM

REFLECT

Forming Reflections:

A reflection makes a guess about what the person means, with an invitation for the person to correct any mistaken or misfit of ideas—


Some ways to get started or open—

<i>It sounds like you...</i>	<i>So you feel...</i>
<i>It seems to you that...</i>	<i>You're wondering if...</i>
<i>You...</i>	<i>You're feeling...</i>

Voice inflection goes down at the end

Reflections have the effect of encouraging the other person to elaborate, amplify, confirm or correct. They convey accurate understanding and reduce defensiveness.

Evidence Based Finding




Draw out...




Reflections:

- Stabilizing
- Forward Moving (focusing & sorting) → → →




Forming Reflections:

- "I'm not sure what to do."
- Stabilizing: "You're not sure."
- Forward Moving: "You're not sure and you want to make the right decision."




Forming Reflections:

- "I'm sick and tired of everyone being on my case."
- Stabilizing: "Everyone is on your case."
- Forward Moving: "You're sick and tired and ready for a change."



Forming Reflections:

- "It pisses me off when people tell what to do."
- Stabilizing: "It makes you mad"
- Forward Moving: "It makes you mad and you don't want to always be mad."



WHAT IS ATTORNEY'S ROLE IN EACH STAGE OF DEPENDENCY & NEGLECT MATTERS

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Preliminary Hearing

- Is there sufficient danger to justify sustained removal?
- Has DCS made reasonable efforts to prevent removal?
- Have a plan to present to the court as an alternative to foster care.
- Determine if immediate services are needed and ask that they be court ordered. Ask the court for Court Ordered Services.
- Determine the type and frequency of communication and visitation with the child and make sure it is put in the Order.



Preliminary Hearing

- Petition filed alleging specific grounds of dependency or neglect
- Within 72 hours
- Probable Cause that:
 - ❖ Child was abused or neglected
 - ❖ Child subject to immediate threat which would cause irreparable harm
 - ❖ No less drastic alternative than removal



Adjudication

- Determine if legal/factual basis to contest exists and if it is in client's best interest.
- Request bifurcated hearing.
- Force DCS to prove each element of case.
- Introduce suggested finding of facts, where appropriate.
- Insist on adherence to the rules of evidence.
- Is there *sufficient danger* and *no less drastic alternative* to justify sustained removal? Have reasonable efforts been made to prevent removal?



Grounds for Findings of Dependency/Neglect

- Dependent/Neglect: T.C.A. §37-1-102(b)(12)
- Abuse: T.C.A. §37-1-102(b)(1)
- Severe Abuse: T.C.A. §37-1-102(b)(21)
 - This written finding is a ground for termination of parental rights and an exception to doing reasonable efforts to reunify (as long as it is in best interests of child)



Dispositional Hearing

- Can be most critical stage of proceedings
- Who shall have custody and control of child
- Who is best suited to protect safety, physical, mental and moral welfare of the child
- What steps are necessary to resolve the problems that caused state intervention and to reunify
- Present witnesses on behalf of parent or child
- File appeal when appropriate



Post-Disposition

- Make sure the parent is visiting with the child and sibling visitation is occurring and modify accordingly.
- Seek to modify prior court orders and permanency plan if vague or changes occur.
- Make periodic calls to the parent and caseworker to determine status of services.
- Ensure both the parent and child are receiving services - Take actions necessary to ensure services are provided.
- Monitor compliance with court orders.



Post-Dispositional Phase / Foster Care Review Board or Judicial Review

- Status review by court or Foster Care Review board within 90 days and 9 months after custody.
- Purpose: Review how case is progressing since last hearing
 - ❖ Assess appropriateness of the goal(s)
 - ❖ Assess compliance of DCS in providing reasonable efforts (services)
 - ❖ Assess compliance of parent with the tasks on the permanency plan
 - ❖ Assess the status of the child



Parent's Attorney/Post-Disposition

- Participate in all reviews.
- Consult with parents or child prior to review.
- Present witnesses/evidence of compliance with permanency plan.
- Present lack of reasonable efforts.



Permanency Plan Staffing

- Who attends?
 - ❖ Anyone with relevant information about the child's best interests
 - ❖ DCS (petitioner)/CSA
 - ❖ Parents (respondent) and Attorney
 - ❖ Child
 - ❖ Guardian Ad Litem
 - ❖ Foster Parents



Types of Cases to Consider Concurrent Planning

- Exceptions to reasonable efforts
 - Child has been abandoned and parents have disappeared or rarely visit.
 - Child or siblings have been in out-of-home care for months or repeated placements with CPS interventions.
 - Parent is mentally ill/challenged or has alcohol/substance abuse issues/domestic violence.
 - A very young child



What Permanency Plan Must Contain

- List of services necessary to achieve each goal (reasonable efforts)
- List of each party's responsibilities
- When services will be provided
- Date by which each goal will be accomplished.
- Definitions of abandonment
- TPR criteria and procedures



Perm Plan

- Participate fully in all proceedings, including permanency plan, staffing, ratification of the plan, pretrial conferences and settlement agreements.
- Ensure permanency plan responsibilities are in the child's best interest **and appropriate for parent**.
- File and respond to pleadings.
- Present documentation of **substantial** compliance – not 100% compliance.
- Present evidence that DCS has not provided all the services ordered.
- Present a plan for the child's safe return to the home.
- Convince DCS prior to the hearing that your plan is appropriate.



MEPA-IEP

Multiethnic Placement Act of 1994

- Eliminate the over-representation of minority children in out-of-home care
- Decrease the time children wait for adoption
- Facilitate recruitment and retention of foster and adoptive parents who can meet the distinct needs of children awaiting adoption
- Eliminate discrimination on basis of race, color, or national origin of the child or prospective foster/adoptive parent



Who is covered Under MEPA-IEP

- Any agency or entity that received federal assistance and is involved in adoption or foster care placements
- All state and county child welfare agencies
- Any private agencies involved in placements that receive HHS funds from any source



Can Race Ever be Considered?

- Race, color or national origin may not be routinely considered
- No decisions based on race or ethnicity except where necessary to achieve compelling government interest
- Best interests of the child is a compelling government interest
- Any consideration of race must be narrowly tailored and individualized



HOW TO WORK WITH PROBLEM SOLVING COURTS TO BENEFIT YOUR CLIENT AND THEIR FAMILY

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Why Juvenile Problem Solving Courts?

- The **cycle** of addiction is created by changes produced in brain chemistry from **substance abuse**. It is perpetuated by physiological, psychological and emotional dependency. This **cycle** of addiction continues unrestrained, until some type of intervention occurs (self-intervention, legal, **family**, etc.)
- In Tennessee**:
 - ❖ 18,733 nonfatal overdoses outpatient visits 2020
 - ❖ 7,063 nonfatal overdose inpatient visits in 2020
 - ❖ 3814 fatal overdoses in 2021
 - ❖ 3032 fatal overdoses in 2020
 - ❖ 824 babies born with Neonatal Abstinence Syndrome in 2020
- Science tells us that many children's futures are undermined when stress damages their early brain architecture.

**According to TN Department of Health



Break the Cycle

CHILDREN RAISED BY AN ADULT WITH 1 OR MORE ACEs ARE **1000X** MORE LIKELY TO SUFFER THEIR OWN ADVERSE EXPERIENCES.

2/3 ADULT POPULATION WITH AT LEAST ONE ACE

CYCLE OF ADVERSE CHILDHOOD EXPERIENCES (ACEs)

2X MORE LIKELY TO EXPERIENCE PHYSICAL HEALTH ISSUES

3X MORE LIKELY TO EXPERIENCE MENTAL HEALTH ISSUES

87% HAVE EXPERIENCED MULTIPLE ACEs

**Dr. Jane Gleissner

Addiction

Addiction is a brain disorder.

- A state in which an organism engages in a compulsive behavior.
- Behavior is reinforcing (rewarding or pleasurable).
- Loss of control in limiting intake.

“Addiction is not a choice anybody makes. It’s a response to emotional pain.”

Frontal Lobe = “Stop” Functions – insight, judgment, empathy

Right Hemisphere = “Go” Functions – reward system – food, water, sex

THESE TWO LOBES OF THE BRAIN ARE NOT FULLY CONNECTED UNTIL AGE 23 FOR FEMALES AND AGE 25 FOR MALES.

Reward Pathway

Information transmitted from ventral tegmental area (VTA) to prefrontal cortex (frontal lobe) via neurotransmitters (dopamine).

Drugs block the receptors thereby blocking the transmission of the signals.

Recovery of Brain Dopamine Transporters in Chronic Meth Users

- Continued use of methamphetamine greatly reduces the binding of dopamine to dopamine transporters (red and green) in the frontal lobe.
- With prolonged abstinence, dopamine transporters in this area can be restored.
- **It takes 2 years to regain full functionality of frontal lobe.**

Effectiveness of Treatment

- Goal of treatment is to return to productive functioning.
- Treatment reduces drug use by 40-60%.
- Treatment reduces crime by 40-60%.
- Treatment increases employment prospects by 40%.
- Drug treatment is as successful as treatment of diabetes, asthma, and hypertension.

What are Problem Solving Courts

- **Community engagement** and **systems-change approach** focused on improving how the courts, child welfare agencies and related child-serving organizations work together, share information and expedite services for children and families in the child welfare system.
- Approach has been shown to:
 - ❖ Decrease the amount of time children spend in foster care by up to a year
 - ❖ Decrease the recurrence of maltreatment
 - ❖ Successfully connect children and families to needed services



Working with Parents in PSC

- Be aware of the client's mental health status and be prepared to assess whether the parent can assist with the case.
- Understanding substance abuse, including relapse, so you can effectively advocate for your client during all stages of the case.
- Understand the process and effectively communicate with your client throughout the process. Understand your client may not initially have the ability to communicate, accomplish small tasks, comprehend the process and requirements, etc.
- Attempt to explain how your client's background, mental health issues and/or substance abuse issues might affect their ability to comply with court orders and agency requests.



Working with Parents in PSC

- Stay actively involved and engaged.
- Advocate for continued, consistent, frequent, high quality visitation for your client to ensure successful reunification.
- Communicate with **all** members of the multidisciplinary team.
- Identify and use to clients' advantage their individual, familial, cultural, and community strengths. Understand that many times individuals with substance abuse issues are forced to rebuild the relationships.
- Identify potential ancillary legal issues that could impact client's dependency case and refer client to legal resources to address issues, or handle if competent to do so.



Working with Parents in PSC

- Understand how racial, cultural, social, and economic differences may impact the attorney/client relationship; avoid imposing personal values upon your clients; and take these factors into account when working with your clients to achieve their case goals, including identifying and accessing services.
- Cooperate and communicate regularly with client's other legal service providers to ensure dependency proceedings and other legal proceedings benefit client.



SURRENDERS, ADOPTIONS AND TPRs

REPRESENTATION IMPROVEMENT PROJECT FOR THE PROMOTION OF LEGAL EXCELLENCE
Parent Representation Skills Training
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Voluntary Surrenders

- If surrender of rights is unrelated to adoption, courts must find the biological parent to be incapable of caring for the child and it would be in the child's best interest to be under the care of the Department of Children's Services.



Voluntary Surrender and Adoptions

- 1) The child must be at least 4-days-old before surrender, and the accepting party must have physical custody of the child at the time of surrender.
- 2) Parties need ID, AND now they need their respective "pre-surrender information forms" done and in hand. Found at T.C.A. § 36-1-111(b)(4) for the surrendering party, (b)(5) for the accepting party.
- 3) Accepting parties need social and medical history form, the same DCS form previously required and available from DCS, and If the surrender is executed to anyone other than a licensed adoption agency or DCS, the accepting parties current and approved court report from their home study is required. You can't waive this.



Voluntary Surrender and Adoptions

- 4) Carefully calculate the revocation period. The revocation period is 3 days as calculated under T.R.C.P. 6.01.
- 5) The surrender hearing is in private, generally in chambers. The only other person who can be present with a surrendering party is their lawyer.
- 6) After the surrender is executed by both parties, the clerk should take the original. The surrendering and accepting parties and their counsel each should leave with certified copies of the surrender, and the surrendering party should leave with a blank revocation form and should understand how to revoke if they decide to do so.



DCS Adoptions

- Packet of information.
- Possible legal issue with voluntary surrender – What if your client of not of the right cognitive mind to make a voluntary surrender?



Termination of Parental Rights

- It's vital to note that our laws prioritize the best interest of the child above a parent's right to bring up their child as they see fit and, therefore, allow a parent's legal rights to be terminated under some circumstances.
- More specifically, Tennessee law allows a parent's rights to be terminated if: (1) the grounds for termination have been established by clear and convincing evidence, and (2) terminating the parent's rights is in the best interest of the child. [Tennessee Code section 36-1-113](#).
- [Tennessee Code 36-1-113](#) governs termination of parental rights in the State of Tennessee. According to that statute, a parent's rights can only be terminated when a court finds **both** of the following:
 - A finding by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established.
 - That termination of the parent's or guardian's rights is in the best interests of the child.



Jurisdiction

- Juvenile, Circuit and Chancery Courts have concurrent jurisdiction over the TPR
- Only Circuit and Chancery can hear the adoption case
- The filing of adoption in Chancery or Circuit suspends any TPR proceedings in any other court



Venue

- In the court of the county where the child resides in the physical custody of the petitioner
- In the court of the county where the custody order was entered
- In the court of the county where the child currently resides
- In the court of the county where the adoption has been filed



Who May File

- Specifically designated by statute as “**having standing to file a petition**” are:
 - ❖ Biological parents (stepparent adoption)
 - ❖ Extended family members
 - ❖ the prospective adoptive parents of the child,
 - ❖ any licensed child-placing agency having custody of the child,
 - ❖ the child’s guardian ad litem,
 - ❖ CASA
 - ❖ the Department of Children’s Services, T.C.A. § 36-1-113(b).
 - ❖ Any person who has knowledge of the facts alleged or is informed and believes they are true. T.R.J.P. 39(a).



Petition: Contents

- The petition **must be verified (signed under oath)** but may be based upon “information and belief” -- the petitioner need not have first hand knowledge of the facts alleged
- The petition must include statements of the following:
 - ❖ The child’s name
 - ❖ The child’s age or date of birth;
 - ❖ The child’s place of birth
 - ❖ The child’s current residence address or county of residence or that the child is in the custody of the Department of Children’s Services or a licensed child-placing agency



Petition: Filing of Answer

- The Rules of Civil Procedure govern the proceedings in chancery and circuit court and require the filing of an answer.
- The Rules of Juvenile Procedure govern the proceedings in juvenile court and do not require that an answer be filed to a termination petition, but a written answer **may be filed**. T.R.J.P. 39(d).



Service of Process

- The petition must **name** and the following must **be served** with a copy:
 - ❖ Legal parents
 - ❖ Guardian
 - ❖ Biological parents
- Exception is where parent, legal parent, guardian, or putative father of the child has:
 - ❖ Surrendered parental or guardianship rights to the child;
 - ❖ Executed a parental consent which has been confirmed by the court;
 - ❖ Waived such rights pursuant to T.C.A. § 36-1-111(w);
 - ❖ Lost parental rights to the child subsequent to a termination of parental rights; or
 - ❖ Is deceased.
- T.C.A. § 36-1-113(c)(3)(B); T.C.A. § 36-1-117(a).



Service of Process – Putative Fathers

- If the mother was married when the child is born or conceived, the husband must be named and served unless there is a court order (e.g. a divorce decree) declaring him not to be the father of the child.
- If the mother and biological father were not married, the biological father must be served if he was legally declared to be the father by court order, or signed an Acknowledgment of Paternity.
- The following putative fathers must be served: anyone who has:
 - ❖ filed a legitimation petition
 - ❖ registered with the putative father registry
 - ❖ been identified by the mother under oath as the father
 - ❖ claimed to the mother, the petitioner or DCS to be the father
 - ❖ was openly living with the child at the time of removal
 - ❖ is recorded on the child’s birth certificate as the father
 - ❖ entered into a permanency plan in which he acknowledged he was the father
 - ❖ has been identified as the father “by other information that the court determines to be credible and reliable.”
- T.C.A. § 36-1-117(b) and (c).



Evidence

- The Tennessee Rules of Evidence apply to the trial of termination of parental rights petitions in juvenile, circuit, or chancery court. The Tennessee Rules of Juvenile Procedure, in regard to the admissibility of evidence, also apply to the trial of termination of parental rights petitions in juvenile, circuit, or chancery court. T.C.A. § 36-1-113(j).
- Neither the husband-wife privilege, physician-patient privilege, psychologist-patient privilege, or clergy-penitent privilege shall be grounds for excluding evidence in termination of parental rights proceedings. T.R.J.P. 39(f)(5).



Findings of Fact

- **Clear and convincing evidence that grounds for termination exist** and the termination of parental rights is in **the child's best interest**, then it must enter an order granting the petition. T.R.J.P. 39(g). The clear and convincing evidence standard applies to establishing both the grounds for termination and that termination is in the child's best interest. *In re M.C.G.*, No. 01A01-9809-JV-00461, 1999 WL 332729, at *9 (Tenn. Ct. App. May 26, 1999).
- *The trial court should make specific findings of fact with reference to the specific evidence that the court found clear and convincing. See e.g., In re Jeremy D.*, No. 01A01-9510-JV-00479, 1996 Tenn. App. LEXIS 292 (Tenn. Ct. App., May 17, 1996).
- A juvenile court order terminating parental rights shall award complete custody, control and guardianship of the child to the Department of Children's Services or a licensed child-placing agency with the right to place the child for adoption and consent to adoption in loco parentis. T.R.J.P. 39(g)(3).



Grounds for Termination

- Abandonment
- Substantial non-compliance
- Persistence of conditions
- Severe child abuse
- 2 year sentence for conduct against a child
- Parent sentenced to serve 10+ years in prison and child under 8



Grounds for Termination

- Criminal Sentence or Civil liability for the death of the parent
- Child conceived out of a rape for which parent was convicted.
- Mental incompetence and unable to care for child
- Non-legal Father grounds



Persistence of Conditions

- Child has been removed for more than 6 months
- Conditions that led to removal still persist and would likely cause the child to be subjected to further harm or abuse
- There is little likelihood that the conditions will be remedied at an early date
- Continuation of the parent-child relationship greatly diminishes the child's chances of having a safe, stable and permanent home



Severe Child Abuse

- Parent or guardian has committed severe child abuse as defined in TCA 37-1-102
- Severe = Abuse causing great bodily harm or failure to protect from such abuse
- Sex abuse or abuse causing psychological trauma
- Abuse of this child or of a sibling, half-sibling or of a child residing in the home



Non-Legal Father

- For use only with non-legal fathers
- Non-payment of support or even birth expenses
- Non-visitation
- Did not file for paternity
- Failed to manifest an ability and willingness to parent the child
- Placing the child with them now would pose a risk of substantial harm to the child



Best Interests Factors

- The parent has made adjustments (and whether these adjustments appear to be lasting) to make their home safe for the child.
- The parent regularly visited or made contact with the child.
- A meaningful relationship exists between the parent and the child.
- A change of caretakers and environment would likely harm the child.
- The parent (or someone living with them) has been neglectful or abusive towards the child or another family or household member.
- The parent's home is healthy and safe.



Best Interests Factors

- The parent's emotional and/or mental status would be detrimental to the child.
- The parent has paid any child support that they are legally required to pay.
- Has parent made an adjustment of circumstances?
- Have they made a lasting adjustment?
- Have they visited regularly?
- Do they have a meaningful relationship with the child?
- Any other factors.



DCS Must File a TPR

- Child in foster care for 15 of the last 22 months
- Child is an abandoned infant
- Parent convicted of certain crimes (ex. murder, manslaughter)
- Severe abuse finding (file TPR within 60 days of court finding).



Exceptions to Filing TPR

- Child is cared for by a fit and willing relative.
- DCS and Court finding of a compelling reason why TPR is not the best course of action at this time.
- DCS has not provided reasonable efforts.



MOTION PRACTICE, TRIAL TIPS & STRATEGIES IN JUVENILE COURT

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Motion Practice

- Motions for Discovery
 - Informal Discovery: Review the child welfare agency case file as early as possible. Obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers to help instruct attorney on agency's case theory.
 - Formal Discovery: When needed, use formal discovery methods to obtain information.



Motion Practice

- Motions for Psychological, Medical Assessments or to Provide Services
- Motions for Restraining Orders
- Motions to Strike or Dismiss Petition
- Motions for Change of Placement
- Motions to Modify Visitation
- Motion for Lack of Reasonable Efforts



Trial Strategies

- Begin your trial strategy as soon as you start your case with the development of your case plan.
 - What do you want to say at the end of the case in your closing argument?
 - What evidence must you present to be able to say it?
- **Develop a case theory and strategy to follow at hearings and negotiations.**
- Trials are just telling a persuasive story – Case Theory, Theme & Frame
 - Theory – Adaptation of your story to the legal issues
 - Theme – Gives persuasive force to your arguments
 - Frame – Provides the setting in which facts are received



Theory of Case

A logical, persuasive story of what really happened” that:

- ❖ is consistent with the **undisputed evidence**
- ❖ explains your version of the **disputed facts**
- ❖ explains what you want to see happen next

Must address:

- ❖ The facts of the case – both undisputed and undisputed
- ❖ the law
- ❖ the result you think is best

Gives force and direction to your advocacy.



Theory of Case v. Needs of the Case

- The theory of the case is the “big picture”—what the case is about and where you want it to go.
- The “needs” are the smaller pieces that will help you to get to the ultimate goal.
 - ❖ What are the child’s, the parents’ and the family’s needs?
 - ❖ What steps must be completed to move the family toward the ultimate permanency goal?



Advocacy Corollary

<u>Need/Goal</u>	<u>Advocacy Corollary</u>
Identify parent’s need	Match need to at least one method of advocacy.
Identify goal	Try least adversarial first. Be prepared to use more adversarial methods if necessary to address need or realize goal.



Evidentiary Issues

- Hearsay Exception for Statement of Child (TRE 803(25) - Provided that the *circumstances indicate trustworthiness*, statements about abuse or neglect made by a child alleged to be the victim of physical, sexual, or psychological abuse or neglect, offered in a civil action concerning issues of dependency and neglect, issues concerning severe child abuse, or issues concerning termination of parental rights, and statements about abuse or neglect made by a child alleged to be the victim of physical, sexual, or psychological abuse offered in a civil trial relating to custody, shared parenting, or visitation.
- Declarants of age 13+ at the time of the hearing must testify unless unavailable as defined by Rule 804(a); otherwise this exception is inapplicable to their extrajudicial statements.



Evidentiary Issues

- Children 13 or older must testify unless unavailable per TRE 804(a) or not competent per TRE 601.
- In re Kansas, Tenn. Ct. App. October 2022 – If court determines child is competent to testify and does not *exclude the evidence pursuant to Tennessee Rule of Evidence 403, the child should be allowed to testify. The trial court should, in its discretion, consider and implement any accommodations delineated in Tennessee Rule of Juvenile Practice and Procedure 306.*
- Child assumed competent unless presumption rebutted. (TRE 601)



Evidentiary Issues

- Expert Testimony – Experts must be qualified by the court in order to be able to offer *professional opinion testimony*. Qualified based on knowledge, skill, experience, training or education. (TRE 702)



Additional Tips

- Explain to clients the process, options, what is at stake, consequences of their decisions, management expectations, etc.
- Provide the client with contact information in writing and establish a message system that allows regular attorney-client contact.
- Work with the client to develop a case timeline and tickler system.
- Meet and communicate regularly with the client well before court proceedings. Counsel the client about all legal matters related to the case, including specific allegations against the client, the service plan, the client's rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with service plans.



Additional Tips

- Provide the client with copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule or court order.
- With the client's permission, and when appropriate, engage in settlement negotiations and mediation to resolve the case.
- Advocate at all stages of the process including between hearings when the Department is making important decisions about the case.
- Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.



Additional Tips

- Review court orders to ensure accuracy and clarity and review with client. Take opportunities to prepare.
- Consider and discuss the possibility of appeal with the client and make sure they know the strict timelines for appeal.
- Take diligent steps to locate and communicate with a missing parent and decide representation strategies based on that communication
- Utilize your most basic tool for advocacy for your client – collaboration and connection with fellow advocates!



Trial Tips – What tips do you have?

1. Prepare a trial notebook with exhibits, witness questions, notes, opening and closing statements, etc. that are easily accessible and organized according to the flow of the trial.
2. Have your resource books and/or cheat sheets readily accessible at your table. (i.e. Juvenile Rules of Practice and Procedure, Rules of Evidence, Red Book)
3. Identify, locate and prepare all witnesses.
4. When deciding what witnesses to call, ask what each witness contributes to your theory and overall case strategy.



Trial Tips – What tips do you have?

5. Thoroughly prepare the client to testify at the hearing.
6. Prepare proposed findings of fact, conclusions of law and orders when they will be used in the court's decision or may otherwise benefit the client.
7. If reason for Cross Exam it to repair or minimize damage, enhance your case or detract from the opponents case, then sit down and don't cross! Don't engage in power struggle. Don't try to get them to change their story. Save the nuggets for closing statement and restate them using your own words.
8. A cross exam is not the time to gather new information. Refrain from asking questions to which you do not know the answers.



We are so excited to work with you!
Any Questions or Suggestions, Please Contact Us:

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