

**TRIAL PREPARATION**

---

---

---

---

---

---

---

---

**GATHERING EVIDENCE THROUGHOUT THE CASE**

If at each stage of a CHIPS case you are regularly obtaining/updating the records necessary to assist with proving your CHIPS and PERMANENCY cases it will be much easier!!!

This requires cooperation of the social worker(s) and County Attorney's Office.

---

---

---

---

---

---

---

---

**EPC/PETITION FILING**

- During the assessment period of DHS's investigation they have increased access to records and information regarding the children and adults that are involved in their care. Minn. Stat. § 62B.556, subd. 10.
- Work with SW to gather copies of all past and current intakes, case notes and reports that the agency (and prior counties agencies) regarding the child(ren), parents and other persons residing in the child(ren)'s parent's homes
- Gather all police reports, related evidence (photos, video, audio, lab reports) related to the EPC incident(s).
- Gather relevant criminal file records (i.e. prior convictions for assaults, drug/alcohol related offenses, maltreatment offenses, etc.) for all parents, child(ren) and other persons residing in the parent's homes (complaints, police reports, sentencing orders, probation violation reports/orders, etc.).
- Gather copies of any custody orders relevant to the case.
- Gather copies of relevant civil file records (i.e. OFP/HRO, Eviction, Commitment, etc.) proceedings (petitions, affidavits and orders).

**PRACTICE TIP: For all prior Court records my office usually gathers certified copies of the records to assist with admissibility. We usually do not rely on Judicial Notice as then we don't usually get a very clear record for appellate purposes exactly which records were reviewed and which were not. If we submit certified copies of Court records then we have more control over the appellate record if needed.**

---

---

---

---

---

---

---

---

- Settlement discussions are a critical part of every hearing... get recommendations to parents and their attorneys as early as possible in the case (EPC hearing) so that settlement terms are not a surprise to anyone and to facilitate a more transparent relationship between the Agency and clients.
- Include in the proposed disposition (and hopefully the Court's disposition order) a term to the extent of:
  - All parents are to sign releases as requested by the social worker to coordinate services and monitor and report compliance of the Court's disposition and case plan.

---

---

---

---

---

---

---

---

**ADMIT/DENY HEARING**

- SW to create provider and list of schools for past and present based on past case notes and current case recommendations
- SW to request releases from parents for past providers and children's schools and current or newly recommended providers and schools. SW to send copies of all releases signed to CAO and case note any providers/schools that the parent refused to release records
- Circulate a stipulation and submit stipulation and proposed order to parties to assist with discovery.
- Request the Court to issue a protective order related to discovery in the case so that such discovery is not misused by parties
- **MAKE SURE TO REVIEW SERVICE ISSUES OF ALL PARTIES/PARTICIPANTS AND DEVELOP A PLAN TO COMPLETE SERVICE!!!**

---

---

---

---

---

---

---

---

**PRE-TRIAL PREP (1-2 WEEKS AFTER A/D HRG)**

- For all providers and schools that the parents have signed consent send out request for records along with copy of release
- Practice tip- frequently the releases that DHS collects are to the agency- send the letter as the attorney for the agency and request that the records are sent to the agency per the request... frequently SW's are too busy with case management, referrals, etc. that they are not able to send out these records requests in a timely manner so it may be better managed at the CAO level.
- File necessary motions to access records for past and current providers to be addressed at pre-trial.
  - CD, Medical and School records require that the provider is also served with the motion and noticed with the hearing date as well as the subject of the records
- Gather CV's for all expert witnesses that have issued reports/letters whether or not they will testify.

---

---

---

---

---

---

---

---

**PRE-TRIAL**

- Rule 36... is your pre-trial hearing following the requirements of Rule 36? Is your Court scheduling adequate time to do so? Does the resulting order comport with the rule? If not, may be a good idea for discussion at your next CJ meeting.
- Address motions filed for release of records...
- File updated 17.01 notice prior to pre-trial with updated information re: witnesses and documents based on the records received that have been gathered as case progressed.
- If calling expert witnesses and they have not issued reports or letters of opinion and basis request such a report or letter to be written for discovery.

---

---

---

---

---

---

---

---

**OTHER NOTICES/MOTIONS THAT MAY BE NECESSARY AROUND PT TIME**

- Judicial Notice-MRE 201
- Intent to Admit Child's Statement
- Business Records
- Public Records

---

---

---

---

---

---

---

---

**WEEK OR TWO PRIOR TO TRIAL**

- Hold trial prep meetings with each potential witness...
  - Hear what they have observed and recommend... if they haven't reduced such to writing to disclose then make sure to disclose content of their statements (Experts usually will write up an updated letter or summary if requested)
  - When speaking with them you will likely be able to assess how much time their testimony may take to assist in witness timing planning
  - Work with witness to narrow down what day/time they will need to be present to testify (this helps keep costs down and increases cooperation from providers especially).
  - Make sure that you have received all the records that providers are relying on for their opinions, etc. and that you have disclosed all of them
  - Work with the provider as to which documents may be particularly important and amend Exhibit list if necessary

---

---

---

---

---

---

---

---

**PRIOR TO 1<sup>ST</sup> DISPOSITIONAL REVIEW HEARING**

- Review with SW that agency has valid releases to all current providers. If parent has refused to sign releases request that Court address parent's refusal to allow monitoring by DHS of the Court's ordered disposition and the case plan.
- Review that SW has filed and served the reports from all assessments ordered by the Court so that recommendations may be incorporated into the dispositional review orders.
- Verify that OHPP/Case plan is up to date and filed with court. The dispositional review order should specifically approve the plan or if between hearings file a proposed approval order of the plan for the court.

---

---

---

---

---

---

---

---

**5 MONTHS SINCE BEGINNING OF CASE  
(PERMANENCY REVIEW PREP)**

If children remain in OHP, repeat efforts done just prior to the first dispositional review... after consult with providers SW should adjust recommendations at the next review hearing.

---

---

---

---

---

---

---

---

**9 MONTH DISPOSITIONAL REVIEW**

- If children remain in OHP, send records requests to providers that have provided services during current CHIPS case. Request that providers send records to date as well as then continue to send updated records at least monthly.
- This gives time for the SW to gather updated releases from parents if needed and for refusal to sign releases to be addressed at the dispositional review hearing.
- It also gives time for a motion to be filed (same as PT discovery of records motion) to obtain copies of the records if providers do not honor the release or if parents refuse to sign releases.

---

---

---

---

---

---

---

---

**11 MONTHS- PERMANENCY PETITION FILING**

- Confirm receipt of records from all providers and address any issues in getting the requested records.
- Obtain agency records and updated case notes
- After filing permanency petition serve/re-serve ALL records along with the SW reports, GAL reports, CHIPS petition and Orders in the Permanency file.

---

---

---

---

---

---

---

---

**PERMANENCY PRE-TRIAL**

- Schedule trial prep appointments with all providers, involved social workers, visit supervisors, foster parents, etc.
  - Make sure what they know is in the disclosed documentation
  - If they know important other information or are drawing expert opinions have them issue a letter/report that is updated for discovery
  - Determine amount of time will be necessary for testimony
  - Coordinate scheduling of their testimony for the trial dates

---

---

---

---

---

---

---

---

**WITNESS PREP**

- **Guide witness through process**
- **Possible cross-exam questions**
- **Special considerations:**
  - New social workers (meet with them twice)
  - Foster parents
  - Therapist/counselors

---

---

---

---

---

---

---

---

**WITNESS SELECTION**

- **Cost-benefit analysis**
- **Look at the witness:**
  - Role in the Case
  - Experience (Trial and Professional Experience)
  - Personality/Demeanor
  - Bias
  - Reluctance
  - Suggestibility

---

---

---

---

---

---

---

---

**WITNESSES TO CALL/CONSIDER**

- **Parents**
- **Experts**
- **Foster Parent**
- **Police Officer**
- **Teacher/School SW/School Counselor**
- **Skills worker**
- **Visit Supervisor**
- **Counselor/Therapist**
- **Social Worker(s)**
- **GAL**

---

---

---

---

---

---

---

---

**EXHIBIT SELECTION**

**Which exhibits should you introduce?**

**Considerations**

- The Facts/Allegations
  - MCAA Case Law Outline
- The Court
  - What is important to this court?
  - Beware of "dumping"
- Parent's Attorney

---

---

---

---

---

---

---

---

**TYPES OF EXHIBITS TO CONSIDER**

- **Expert Assessments**
  - CV of Expert
- **Case Plan(s)**
- **Prior Court Orders**
- **Court Reports (Social Worker and GAL)**
- **Case Notes**
  - Introduce past case notes from past CHIPS/Family Assessment/Investigations.
- **Prior Intakes**
  - Redact reporter information.
- **Treatment plans records (Parent and Child)**

---

---

---

---

---

---

---

---

**TYPES OF EXHIBITS (CONT'D)**

- **School Records**
  - The "Before and After" Effect
- **Medical/Dental Records**
- **Police Reports or Media**
- **Photographs**
- **Audio/Video of Statements by Parent/Child**
- **Drug Test Results**
- **Visit Notes**

---

---

---

---

---

---

---

---

**ORGANIZING EXHIBITS**

- **Everyone has their own system.**
- **Create a binder for the witness, Judge, yourself.**
- **Use Bates numbers (Adobe)**
- Adobe can also:
  - Redact
  - Combine several documents into one document into one document.

---

---

---

---

---

---

---

---

### STIPULATIONS

- Different styles and circumstances will dictate what you do here.
- **Considerations:**
  - Would it be beneficial/detrimental to have live testimony?
  - Will witness testify only to what is in the exhibit?
  - Is witness hard to locate or reluctant?
  - Is witness expensive?
  - Is this a record that will be difficult to admit?
- **Quid Pro Quo**
- **Consider use of stipulated exhibit list.**

---

---

---

---

---

---

---

---

TRIAL

---

---

---

---

---

---

---

---

### OPENING

- **Don't make this an afterthought.**
- **Rule 49.02**
  - "Petitioner may make an opening statement confined to the facts expected to be proved."
- **Considerations**
  - Provide Case Overview and Detail
  - How specific do you go?

---

---

---

---

---

---

---

---



**ORDER OF WITNESSES**

- **Different ways to order witnesses.**
- **One method:**
  - Parent
  - Reporter
  - Police Officer
  - School official
  - Foster Parent
  - Visit Supervisor
  - Expert
  - Mental Health Case Manager for Child (or Child Therapist)
  - Social Worker of GAL
- **You may want to consider putting expert up directly after the parent.**

---

---

---

---

---

---

---

---

**WITNESS TESTIMONY (GENERALLY)**

- **Go into their background.**
  - Experts: Don't just introduce CV.
  - Gives witness a credibility boost.
  - Unexpected "experts"
    - Foster parent who teaches SPED and has a master's degree.
    - Extensive training and education on working with kids with trauma.
- **Don't ignore your weak points.**
  - Control and reframe.

---

---

---

---

---

---

---

---

**WITNESS TESTIMONY-PARENTS**

- **Parents**
  - Testify first
  - One of the most important witnesses in the trial.
  - Examine by leading questions.
  - Have MRE 611(c) ready.
    - When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions."
  - Think through your questions.
    - Look carefully through treatment records.
  - Ask them about expert assessments/conclusions.
  - Controlling the witness versus letting them talk.
  - Don't be afraid to stray off script a little.

---

---

---

---

---

---

---

---

**WITNESS TESTIMONY**

- Experts
- Child's therapist
- Teachers
- Foster parents
- Visit Supervisor
- Skills Worker
- Past Social Workers
- Current Social Worker(s)
- Guardian ad Litem
- Child, 260C.163, subd. 6

• The court may "take the testimony of a child witness informally," including "outside the courtroom."

---

---

---

---

---

---

---

---

**CROSS EXAM**

- **Think about the typical "gotcha" questions.**
  - Did you meet with or speak with the assistant county attorney prior to your testimony?
  - Are you getting paid to testify today?
  - How many times have you testified for the County?
  - (For expert) Basis for your opinion is info you received from SW
  - Finds statement of social worker in case notes and uses it to highlight bias in social worker.
    - SW commentary about parent
    - SW writing the permanency petition early in the case

---

---

---

---

---

---

---

---

**PARENT'S WITNESSES**

- Treatment Counselor
- The Aunt/Sister
- The Friend from Church or Treatment
- The Neighbor
- The Advocate
- The Acquaintance

---

---

---

---

---

---

---

---



**OBJECTIONS AT TRIAL**

- Hearsay Objections to Case Notes and/or Court Reports
- Take a look at 260C.193, subd. 2:
  - "The court may consider any report or recommendation made by the responsible social services agency" or guardian ad litem or "any other information deemed material by the court."
- Business Records Exception under 803(6)
- Residual Exception under 807.

---

---

---

---

---

---

---

---

**CLOSING**

- Oral or written closing?
- Proposed findings or written argument?
- Make sure you argue/explain the law.
- Court of Appeals –district court should not adopt proposed findings verbatim.

---

---

---

---

---

---

---

---