

# “The Best Interests” Phase

---

TPR Certification Training  
October 16-17, 2014

# The Basics of TPR Disposition

---

- Really the dispositional phase, but commonly called the “best interests” phase
- To the court, not the jury
- Focus is on this elusive standard of “best interests of the child”
- Section 48.426: Standard and Factors for Disposition in TPR – tries to spell out how to determine what is best for the child

# The Basics (continued)

---

- The Court may take judicial notice of the evidence offered in the Fact Finding Phase. (Disposition will be different if you have already had a contested fact finding.)
- The Rules of Evidence are relaxed -- not unlike at sentencing in a criminal case.
- An Agency or Department Court Report will be introduced.
- The Court Report will address:
  - 1) The social and medical history of the child, including prior court involvement.
  - 2) Statement of services needed.
  - 3) Likelihood of adoption.
  - 4) Plans for permanency.

# Factors – Section 48.426(3)

---

- Likelihood of adoption after termination
- Age and health of child at disposition and removal
- Whether child has substantial relationships and if severed would be harmful
- Wishes of child
- Duration of separation from parent
- Potential of stable and permanent family relationship considering current/past placement history and likelihood of future placements

# Preparing for Disposition

---

- Investigate adoptive/foster parent resource
- Obtain permission from GAL to speak with the child
- If older child, consider requesting the appointment of advocate counsel
- Review all evaluations/assessment of your client
- Consider a bonding assessment.

# Preparing for Disposition (cont)

---

- Have CSS observe a visit if he/she hasn't already.
- Come up with a workable alternative to termination.
- Look at the timeline and consider a too soon argument
- Encourage your client to continue working on the conditions of return.
- Investigate relative placements that were missed or ignored by the Department.

# Hiring an Expert – Is it a good idea?

---

- Bonding expert

- Will a bonding assessment likely be favorable for your client?
- Who should do the bonding assessment?
- Will the bonding assessment look at your client and child only or will the evaluator also assess the bond with the foster parent?

- What other possible experts might you consider?

# Typical County/State Witnesses

---

- Social worker or Ongoing Case Manager
- Child's therapist
- Foster Parent
- Evaluators/Experts from the CHIPS case
- Visitation worker

# Our Witnesses

---

- Our client???
- Favorable service providers (i.e. family therapist, parent aide, individual counselor)?
- Client's family members?
- Visitation workers?

# Burden of Proof

---

- Grounds phase – Burden is Clear and Convincing evidence.
- Disposition - ???
- There are those who say "Best Interests" governs, and that there is no specific burden of proof.
  - Note though: In a CHIPS case, Best Interests drives the Disposition, but case law states that the burden of proof is preponderance of the evidence.
- Given the extremely severe consequences of termination, we should be arguing for at least the middle burden of clear and convincing evidence.

# Brainstorming

---

- Other thoughts and ideas?
- Is there anything that has worked for you that wasn't mentioned?