



Building and Maintaining a Relationship and Contact with the TPR Client

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Trauma and TPRs



Definition

- Very difficult or unpleasant experience that causes someone to have mental or emotional problems usually for a long time
- Disordered psychic or behavioral state resulting from severe mental or emotional stress or physical injury
- Deeply distressing or disturbing experience

(Trauma to one person may not be a trauma to another)

(Some people can cope with the trauma and move forward quickly. Others though, may not be able to cope.)

- It Is Real

Causes of Trauma For TPR Parents



- **Loss/Removal of children**
- **Denial/Rejection/Abandoned by family and friends**
- **DV – parent is victim**
- **Childhood experiences**
- **Treatment by system**
 - OCM, attorney, judge, court condition
- **Isolation**
 - fighting all alone, guilt, shame, failure, no one listening, foster parent neglect/abuse/avoidance
- **Emotional/physical abuse - DV – not their fault, parents victims – used against them (death of a child or dv victim)**
- **Others...**

Effects of Trauma



- Physical appearance
- Medical issues
- Loss of sleep
- Depression
- Self-neglect
- Stop mental health treatment/taking medication
- Homeless, transient
- Substance abuse
- Defensive
- Others...

Try to Avoid Re-Traumatizing/Traumatic Reminders



- **Definition of Re-traumatizing**
 - A relapse into a state of trauma, triggered by some subsequent event

- **A traumatic reminder**
 - person, situation, sensation, feeling or thing that reminds a person of a traumatic event. When faced with reminders the person may re-experience the intense and disturbing feelings tied to the original trauma

What to do With the Information You Receive From Client



- Go slow and easy
- Avoid getting to the bad details before establishing a rapport
- Control your emotions
- Encourage them to seek help – don't take on too much
- Remind court and other parties
- Must still prepare for them for trial...show them the picture, videos, audios...
- Others...

Building and Maintaining a Relationship



The case is about the CLIENT!!

Not... Lawyer

Judge

Prosecuting Attorney

Witnesses

Family Members

Building and Maintaining a Relationship



- **Client Centered**
- Flexible, yet directed and guided – be prepared to adapt to the client's style of communication
- Meet or contact where it is convenient for client – courthouse; office; library; text; email
- Think about barriers – transportation, telephone

Building and Maintaining a Relationship



Goals

1. Build Trust – Confidence and Rapport
2. Gather Relevant Information From Client
3. Communicate Relevant Information To Client

1. Build Trust – Confidence and Rapport



- **Explain your Role and Obligations**
 - Discuss Attorney Client Privilege and Confidentiality
- **LISTEN, LISTEN , LISTEN**
 - Eye contact; be actively engaged, looping
- **Understand Client's perspective**
 - Their background and history with CJS will shape their initial approach to you. But demonstrate good boundaries and be confident
- **Show Concern, Empathy, Respect**
 - We ask our client's to share intimate and sensitive details of their lives.

1. Build Trust – Confidence and Rapport



- **Answer his/her Questions**
 - The client needs enough information to make the most informed decisions about their case. If you don't know the answer – research and consult
- **Tell the Client what you will do/have done**
 - Give client map/plan of what you will do
- **Timely response to Client**
 - If it takes you time to return calls, let the client know this, be realistic
 - SCR 20 preamble—“competent, prompt, and diligent”; maintain communication with the client...re: representation.

2. Gather Relevant Information From Client



What is relevant information?

2. Gather Relevant Information From Client



All information is relevant!!

2. Gather Relevant Information From Client



- **Get Client's STORY**
- **Use a client interview form**
- **Use this information to develop Trial Strategy**
 - A thorough client interview is the foundation and the preparation for most of the case from visitation to negotiation to motion prep, deposition, trial prep, investigation, trial and disposition

2. Gather Relevant Information From Client



- **Ask about Client's Goals**
 - And write them down
- **Obtain Social history of Client**
 - And write it down
 - Social history includes: education, family, employment, military, mental health; AODA, physical/sexual abuse; medical; medications; treatment history, hobbies, religion, childhood; friends; the list goes on!
- **Consider mediation**
 - Is this in your jurisdiction yet?

3. Communicate Relevant Information To Client



- **The Petition/The Grounds**
 - use Jury Instructions to assist you and give the client a copy
 - Do not assume client has read the petition
- **Case Process**
 - Two step process; the State's burden; potential witnesses
- **Legal Options**
 - Substitution; court vs. jury trial; involuntary vs. voluntary; stip to grounds; client testify
- **Remember - do not Judge, you Defend.**

Other Important Issues



- **Make sure the client has received all relevant court petitions/reports and review with client. Review in person**
 - Again, the importance of a thorough client interview includes making sure the client has read and understands the case against them. Do not assume the client has read anything.
- **Client's Criminal Record**
 - Use client interview form!
 - Checklist avoids surprises
- **Copy of Jury instructions**

Other Issues cont'd



- **Competency issues**—be aware of them and your obligation as counsel
- **Client perspective**
 - – Past experience with the CJS
 - – It is important to let the Client know that you are a different lawyer.

Importance of Knowing Your Audience



- Inform client about Judge and prosecutor and issue of substitution. Also advise what the jury pool may look like...
 - Example of TPR case
- Prepare the client for court and what to expect.
 - Little routines/quirks about court or the process that lawyers just get used to, clients may not even know exist. Discuss conversations with opposing parties in advance.

It's A Balance



- **Be Flexible**
- **Don't be afraid to ask a question of your client; encourage your client not to be afraid to ask YOU a question**
- **Don't assume that your client will just know what the case is about and the likely result**
- **Listen, Listen, Listen**

Discussion



- **Roadblocks to client communication**

- **Concerns about client communication**

Default



WHAT TO DO IF YOUR CLIENT IS
MIA?

Statutory Authority--Wis. Stat. § 48.23(2)



- (b) In a proceeding involving a contested adoption or an involuntary termination of parental rights, any parent who appears before the court shall be represented by counsel, except as follows:
1. A parent 18 years of age or over may waive counsel if the court is satisfied that the waiver is knowingly and voluntarily made.
 2. A parent under 18 years of age may not waive counsel.
 3. Notwithstanding subd. 1., a parent 18 years of age or over is presumed to have waived his or her person right to counsel and to appear by counsel if the court has ordered the parent to appear in person as ordered, and the court finds that the parent's conduct in failing to appear in person was of age or over to that is egregious conduct in failing to excuse, the court termination of person at any or all subsequent hearings in the proceeding, the parent fails to appear in person as ordered, and the court finds that the parent's conduct in failing to appear in person was egregious and without clear and justifiable excuse. Failure by a parent 18 years of age or over to appear in person at consecutive hearings as ordered is presumed to be conduct and without clear and justifiable excuse. If the court finds that a parent's appear in person as ordered was egregious and without clear and justifiable excuse, the court may not hold a dispositional hearing on the contested adoption or involuntary parental rights until at least 2 days have elapsed since the date of that finding.
- (c) In a proceeding to vacate or reconsider a default judgment granted in an involuntary termination of parental rights proceeding, a parent who has waived counsel under par. (b) 1. or who is presumed to have waived counsel under par. (b) 3. in the involuntary termination of parental rights proceeding shall be represented by counsel, unless in the proceeding to vacate or reconsider the default judgment the parent waives counsel as provided in par. (b) 1. or is presumed to have waived counsel as provided in par. (b) 3.

Statutory Authority--Wis. Stat. § 48.23(2)



(b)3. Notwithstanding subd. 1., a parent 18 years of age or over is presumed to have waived his or her right to counsel and to appear by counsel if the court has ordered the parent to appear in person at any or all subsequent hearings in the proceeding, the parent fails to appear in person as ordered, and the court finds that the parent's conduct in failing to appear in person was egregious and without clear and justifiable excuse. Failure by a parent 18 years of age or over to appear in person at consecutive hearings as ordered is presumed to be conduct that is *egregious and without clear and justifiable excuse*. If the court finds that a parent's conduct in failing to appear in person as ordered was egregious and without clear and justifiable excuse, the court may not hold a dispositional hearing on the contested adoption or involuntary termination of parental rights until at least 2 days have elapsed since the date of that finding.

To Find a Parent in Default or Find That the Parent Has Waived Right to Counsel



Court must

- Order client to appear
- Warn your client of the consequences of failing to appear
- Warn Client of consequences for failure to cooperate with discovery
- Court has the authority to sanction parties
 - under Wis. Stat. §§ 802.10(7) [violating a pre-trial order],
 - 804.12(2)(a) [discovery]
 - 805.03 [failure to prosecute or comply with procedure statues]

When Default Can Be a Sanction



- Respondent-Parent fails to appear for court proceedings
- Respondent-Parent fails to comply with discovery requests by the petition
- Respondent-Parent fails to keep in touch with his/her lawyer
- Conduct must be egregious or in bad faith and without clear justifiable excuse
- Examples

File An Authorization to Appear and Act



- Have your client sign it at your first meeting
- File it with the court at the first appearance
- **SCR 11.02 Appearance By Attorney. (1) Authorized.** Every person of full age and sound mind may appear by attorney in every action or proceeding by or against the person in any court except felony actions, or may prosecute or defend the action or proceeding in person.

What To Do If Your Client Does Not Appear



- Do not disclose privileged information to the court if your client isn't there
- If the court does not remove, you **MUST** keep fighting (even with a empty chair next to you)
- If the court attempts to remove you as counsel, argue to stay on
 - Remind court of the serious consequences at state in TPRs
 - Remind court the statute is unconstitutional as it affects indigent clients
 - Remind court of specific facts to the case to explain client's nonappearance

Motion to Vacate the Default



- **HE'S BACK!!**
- **Wis. Stat. § 806.07—Relief from Judgment**
 - Reasons to vacate the judgment—includes a catchall
 - Must be brought in a reasonable time.
- **Court is required to bear three factors in mind:**
 - (1) that the statute relating to the vacation of default judgments is remedial in nature and should be liberally construed;
 - (2) that the general policy of the law favors giving litigants their day in court with an opportunity to try the issues; and
 - (3) that default judgments are regarded with disfavor in the eyes of the law.

“Prove Up”



- Even if your client fails to appear, the petitioner must nonetheless provide evidence to support one or more of the grounds pled by clear and convincing evidence.
- Wis. Stat. § 48.422 (3) requires a court to hear testimony in support of the allegations in the petition to warrant a finding that grounds exist to terminate parental rights and the resultant finding, pursuant to Wis. Stat § 48.424 (4), that the parent is unfit.
- Take direction from the last conversation you had with your client for what to do at this phase.
- Also fully participate in the dispositional phase.

If Court Removes You, Your Obligations Are Not Over



- **Look for your client immediately.**
 - The court cannot conclude disposition until 2 days after you are removed from the case.
- **Continue to look for your client until you get a final order in the case.**
- **Just because the court has decided that your client waiver his/her right to appear by counsel, your obligations under your SPD appointment continues.**
- **If you have had a discussion with your client about the right to appeal and know his/her position on appeal, consider filing a NOI.**