

# How to Play by the Rules

(almost everything you were afraid to know about  
the Civil Rules of Procedure 😊)

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# Playing Together

- Chapter 48 Discovery...48.293
- Civil Rules of Procedure = Wis. Chapter 804 applies to Chapter 48...48.293 (4)



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# Chapter 804

## Depositions and Discovery

- There are lots of choices:

### 804.01

- Oral or written deposition
- Interrogatories
- Production of Documents
- Inspection of Premises, etc.
- Examinations – mental or physical
- Requests for Admissions
- Frequency unlimited (generally)

# Chapter 804

## Scope

- 804.01(2)
- Primary focus is on parties
- Any matter not privileged
- Needs only to relate to claim or defense
- Doesn't matter if what you seek is admissible..if it is reasonably calculated to lead to admissible information it is fair game

# Chapter 804

## Experts



- Discovery of facts known and opinions held by experts and acquired or developed in anticipation of litigation or for trial may be discoverable.  
804.01(2)(d)
- Interrogatories
- Deposition
- Admissions
- Production of Documents
- But sometimes it will cost you!

# Chapter 804

## If things get out of hand

- Protective Order 804.01(3)
- Motion to Compel 804.12(1)
- Motion for Sanctions 804.12 (2)



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# Chapter 804

## Protective Order

- Motion by party or deponent/ witness
- Must show good cause
- Justice requires order to protect against
  - Annoyance
  - Embarrassment
  - Oppression
  - Undue burden or expense
  - And/or....



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# Chapter 804

## Protective Order (continued)

- Discovery not be had
- Discovery only under certain conditions
- Discovery by other mechanism
- Exclusion of certain subjects/issues
- Limit individuals present
- Seal depositions/responses

# Chapter 804

## Continuing Duty

- 804.01(5)
- A response is forever! Sometimes
- A party who has responded to request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except ...

# Chapter 804

## Continuing Duty (continued)

- **Duty to seasonable supplement response to any questions re:**
  - **Identity and location of persons having knowledge of discoverable matters;**
  - **Identity of each person expected to be called as an expert witness at trial**
  - **Learns that prior response/answer was incorrect**
  - **Learns that prior correct response/answer is now incorrect**

# Chapter 804

## Custody of Discovery Docs

- 804.01 (6)
- The party or attorney initiating discovery keeps the originals
- The party or attorney taking the deposition is suppose to maintain the original transcript 'sealed' until entered into the record or the expiration of the appeal period.

# Chapter 804

## Depositions

- **804.05**
- **When – after commencement of action**
- **Who – any person**
- **Witnesses – may be compelled by subpoena under 805.07**
- **Parties – require only notice, but it is as powerful as a subpoena**

# Chapter 804

## Depositions (continued)

- Reasonable notice in writing  
804.05(2)
- General description to alert witness
- Identify any documents you are requesting pursuant to 804.09
- Any party within 100 miles of residence or place of business ; or anywhere within county in which case is filed 804.05

# Chapter 804

## Depositions (continued)

- If plaintiff/petitioner not resident of this state
- Can be required to attend deposition any place within county case is filed at plaintiff/petitioner's expense, or
- Can be required to attend deposition within 100 miles of their residence or where they work

# Chapter 804

## Depositions (continued)

- A non-party deponent may be required to be deposed within 100 miles of his home, work, or
- At any such other convenient place fixed by order of the court

# Chapter 804

## Depositions (continued)

- Depositions are for everyone
- Cross examination is permitted just as if it were at trial
- Objections should be made at time of examination
- You can advise your client to refuse to answer....but it is tricky

# Chapter 804

## Depositions (continued)

- Advising your client to refuse to answer
- Any party, upon a refusal to answer, with permission of the court may move the court for a ruling by telephone on the objection
- In absence of ruling the witness' answer is to be taken subject to the objection

# Chapter 804

## Depositions (continued)

- In practice...
- Some answers once spoken are too damaging ....
- Consider if you need to make a motion to adjourn the deposition so that you can seek a hearing on objections, or seek a contemporaneous decision by the judge via telephone, or make a motion to terminate or limit the examination

# Chapter 804

## Depositions (continued)

- If you fail to object to a question during deposition, don't worry you get a second chance....
- 804.07 (2) Prior to the entry of a deposition into the record a party may object to its admissibility. Failure to object during the deposition does not constitute waiver.

Hearsay objection was not waived by failure to object at deposition. *Strelecki v. Fireman's Ins. Co. of Newark*, 88 Wis. 2d 464, 276 N.W.2d 794 (1979)

# Chapter 804

## Depositions (continued)

- **HOWEVER.....just like in English there are no hard and fast rules...**
- **If you fail to object to the procedure, question or answer at deposition...then it is probably waived. 804.07(3)(c)2**
- **So admissibility issues can't be waived even if you forget to object at deposition, but objections as to content and form are waived if you don't object at examination.**

# Chapter 804

## Why Depose Anyway???

- Assess the witness
- Hear it before the jury does
- Discover chinks in the armor
- Lock in the witness
- Ask the forbidden questions
- This may be the one time when it is okay to ask a question when you don't know the answer!!!???

# Chapter 804

## Why Depose Anyway???

(con't)

- 804.07 Use in Court
- Contradict or Impeach witness
- Refresh recollection
- Preserve testimony in case of
  - Death
  - Distance



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# Chapter 804

## Interrogatories

- **804.08**
- **Written Questions**
- **Party to Party**
- **On Plaintiff anytime after commencement**
- **On other party anytime after service of Summons/Complaint**



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# Chapter 804

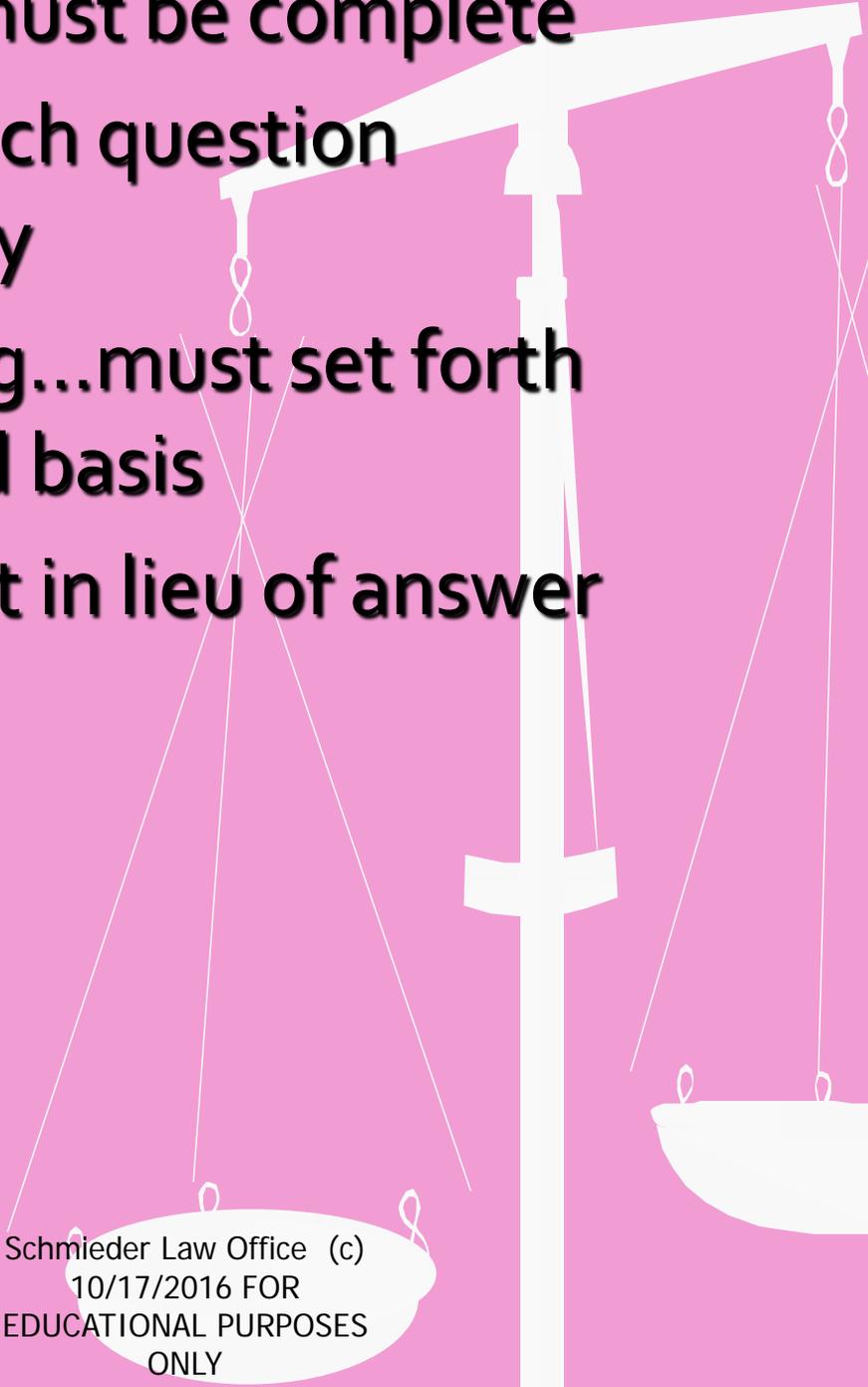
## Interrogatories

- **Duty to answer**
- **Within 30 days or as otherwise agreed or...**
- **Time can be shorten/lengthen by order of the court**
- **If defendant then you may have 45 days from service of summons and complaint if served early in case**

# Chapter 804

## Interrogatories

- Answers must be complete
- Answer each question individually
- If objecting...must set forth nature and basis
- May object in lieu of answer



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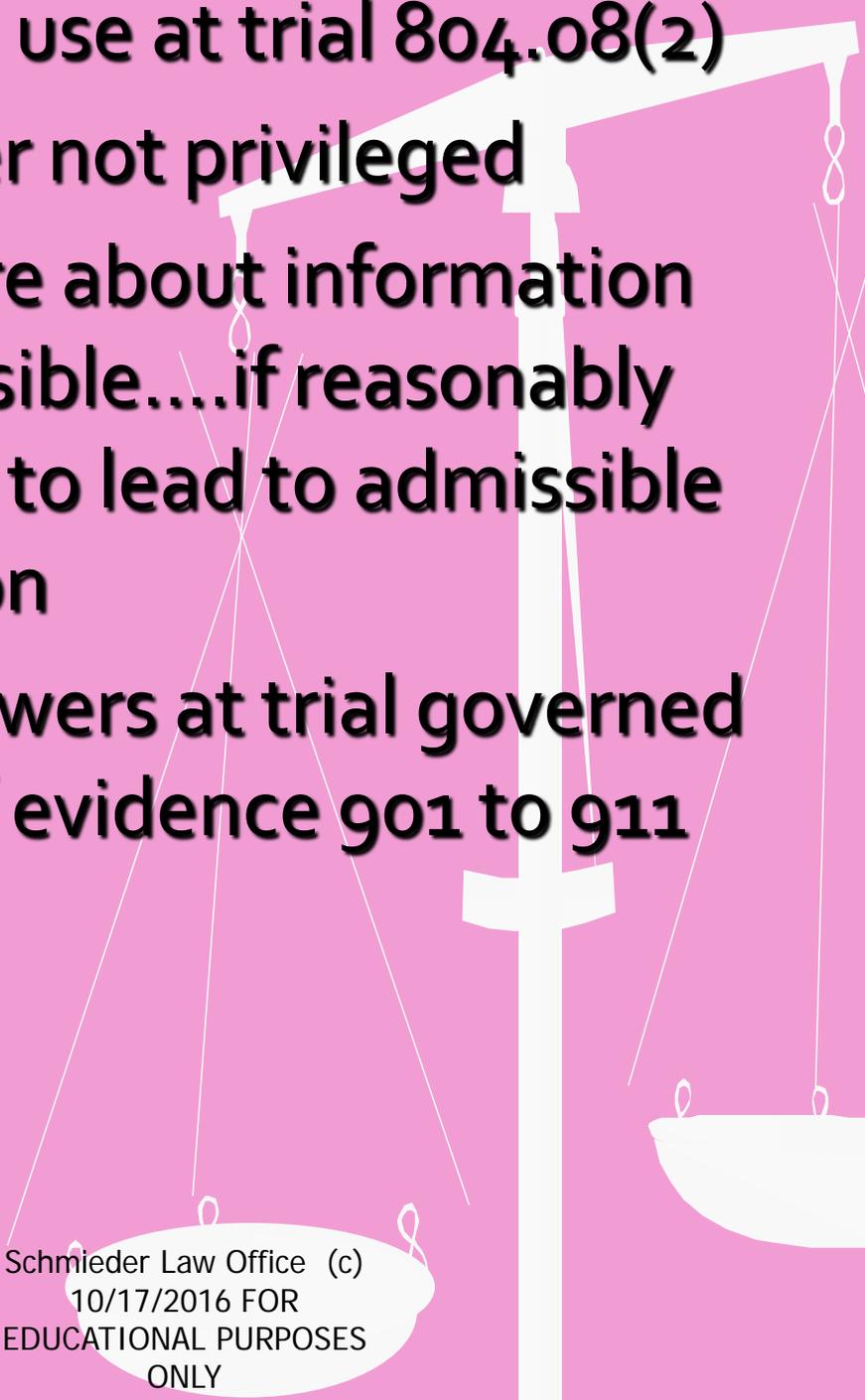
# Chapter 804

## Interrogatories

- If answer is evasive, incomplete or vague....
- If objection is challenged, unreasonable...
- Serving party may seek relief under 804.12.... Motion to Compel/Sanctions

# Chapter 804

## Interrogatories



- Scope and use at trial 804.08(2)
- Any matter not privileged
- May inquire about information not admissible....if reasonably calculated to lead to admissible information
- Use of answers at trial governed by rules of evidence 901 to 911

# Chapter 804

## Production of Documents

- 804.09
- Party to Party
- On Plaintiff anytime after commencement
- On other party anytime after service of Summons/Complaint



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# Chapter 804

## Production of Documents

- Same scope as before...
- Any matter not privileged
- May inquire about information not admissible....if reasonably calculated to lead to admissible information
- Use of documents/information at trial governed by rules of evidence 901 to 911

# Chapter 804

## Production of Documents

- May request production of or permission to inspect, copy test or sample...under party's control
  - Designated documents
  - Electronically stored information
  - Writings
  - Drawings
  - Graphs, charts,
  - Photographs
  - Recordings, images
  - Other data or data compilations

# Chapter 804

## Production of Documents

- Duty to respond/produce
- Within 30 days or as otherwise agreed or...
- Time can be shortened or lengthened by order of the court
- If defendant then you may have 45 days from service of summons and complaint if served early in case
- If object, must state reason and basis

# Chapter 804

## Production of Documents

- A party shall produce documents as they are kept in the normal course of business or
- Organize and label the documents to correspond to the categories of the request



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# Chapter 804

## Production of Documents

- If the request/demand did not specify a format/organization
- Then must produce in a form or format in which ordinarily maintained or in a reasonably useable form
- No need to produce in more than one form

# Chapter 804

## Production of Documents

- If production not complete
- If objections vague or incorrect
- If response/production late
- Then may seek motion to compel and/or sanctions under 804.12

# Chapter 804

## Production of Documents

- Policy and Procedures Manuals
- CLE's for social workers
- Scoring information and guidelines for Safety Checklists
- Visitation Policies
- Volunteer Policies



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## Exam of Parties

- **804.10 Physical/Mental Exam of Parties**
- **Upon motion the court may order exam**
- **Notice must given to all parties**



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# Chapter 804

## Exams...use 48.295

- After filing of petition
- Upon finding by the court that
- Reasonable cause exists
- Physical, psychological, mental or developmental examination, or AODA assessment
- For child, parent, guardian or legal custodian whose ability to care for the child is at issue before the court

# Chapter 804

## Exams...use 48.295

- If granted expense generally paid by court
- If child, parent or expectant mother objects to a particular provider the court shall appoint a different examiner 48.295(3)
- No published cases that address whether requiring a parent to submit to an evaluation over objection violates the parent's right to present a defense.

# When the State wants to evaluate your parent prior to fact-finding – don't go down without a fight

- Originally the 1979 version of sec. 48.295(1), Stats., noted that the child's physical, psychological, mental or developmental condition "may be considered in the disposition of the case"
- Some courts have concluded that the subsequent omission of that language means the legislature intended that the court have the ability to order a parent to submit to evaluations even prior to fact-finding.

# How to say "NO" to exam of your client

- Argue that the construction of Wis. Stats. 48.235(1)(g) and its reference to 48.295 means that pre-fact finding compelled evaluations are only permitted to determine a parent's competency to proceed.
- Argue that requiring an exam pre-disposition violates your client's right to present a defense. The due process protections of the 14th Amendment apply in termination of parental rights cases. ***Brown County v. Shannon R.***, 2005 WI 160, ¶156, 286 Wis. 2d 278, 706 N.W.2d 269.

# Chapter 804

## Admissions

- My second favorite discovery tool
- Party to Party
- For purposes of pending action only (no after life)
- To establish the truth of any matter within scope of 804.01(2)
  - Any matter not privileged
  - Admissible or Reasonably calculated to lead to admissible information
  - Still subject to rules of evidence at trial

# Chapter 804

## Admissions

- The more they admit the less you have to defend.
- Schmid v. Olsen, 111 Wis. 2d 228 330 N.W.2d 547 (1983)
  - Not limited to facts in pleadings



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# Chapter 804 Admissions

- Each admission must be separately set forth
- Avoid compound or complex admissions
- **MUST MUST MUST TIMELY ANSWER**
- Respond in 30 days or deemed admitted...YIKES



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# Chapter 804

## Admissions

- Either admit or deny
- If denied must set for specific basis...Support denials
- If denial is deemed insufficient by court then admission is deemed admitted...or you may be allowed to amend
- If objection is made, provide specific reason
- You may deny in part, admit in part

# Chapter 804

## Admissions

- Propounding party may file motion to determine the sufficiency of denials and objections
- Unless court finds objection justified it shall order response to admission by served 804.11(1)(c)
- If court finds response does not comply with rules...then it can deem them admitted or permit amended response

# Chapter 804

## Admissions

- Any issue admitted is **CONCLUSIVELY ESTABLISHED** for purposes of trial/hearing
- **UNLESS** court permits withdrawal or amendment

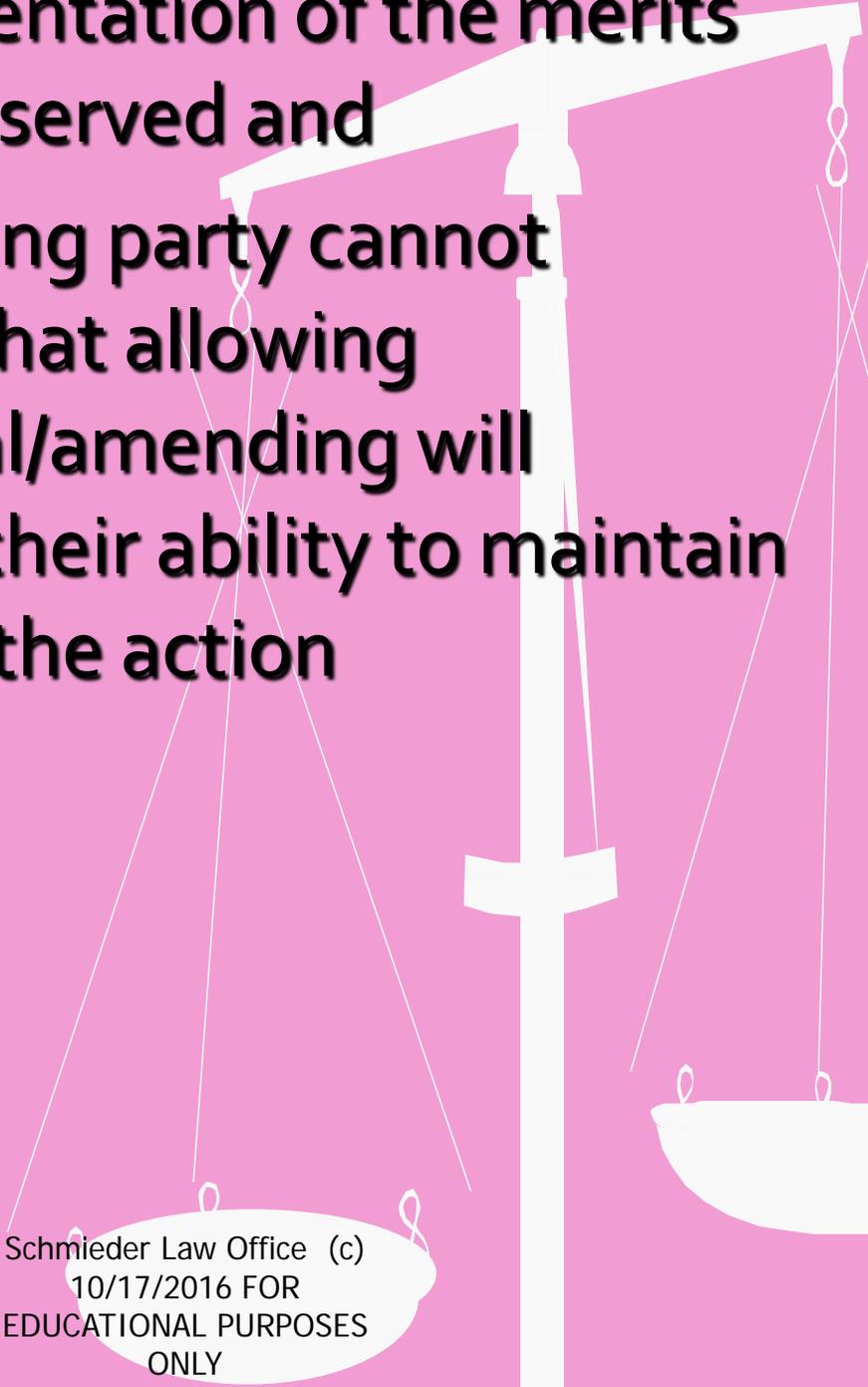


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# Chapter 804

## Admissions

- If the presentation of the merits will be subserved and
- Propounding party cannot establish that allowing withdrawal/amending will prejudice their ability to maintain or defend the action



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# Chapter 804.12

## Compel and/or Sanctions

- What to do if they don't play nice?
- Utilize 804.12 to compel responses, or seek sanction
- Remember what's good for goose is good for the gander, so be aware that turnabout is fair play

# Chapter 804.12(1) Motion to Compel Condition Precedent?

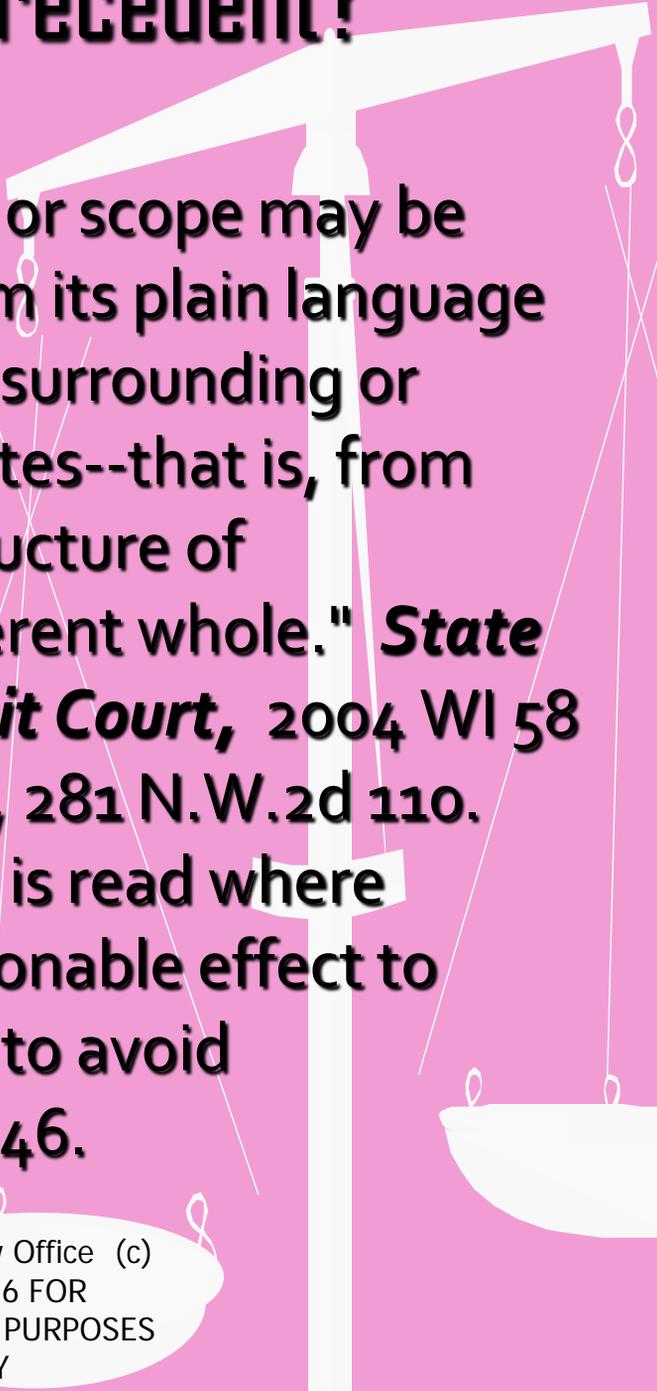


- In Milwaukee the State routinely asks for sanctions under Wis. Stats. 804.12(2) for discovery violations without first seeking a motion to compel under Wis. Stats. 804.12(1).
- What to do?

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# Chapter 804.12

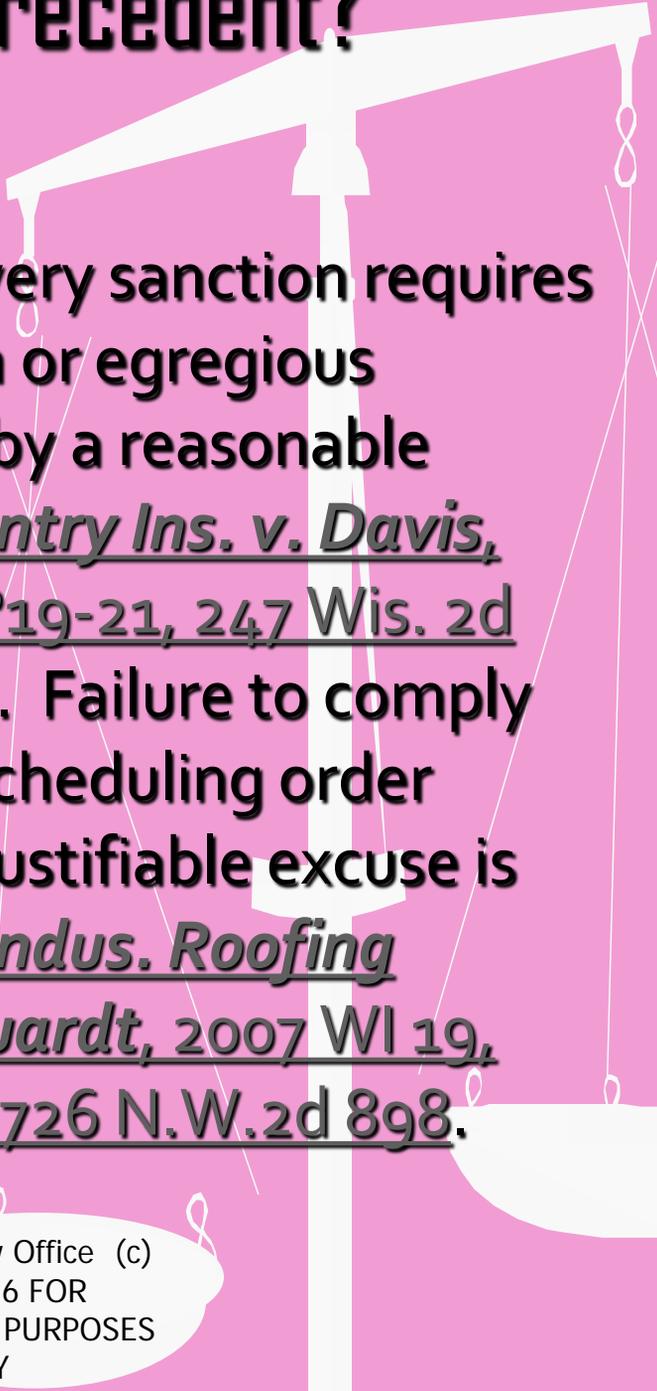
## Motion to Compel Condition Precedent?



- "A statute's purpose or scope may be readily apparent from its plain language or its relationship to surrounding or closely-related statutes--that is, from its context or the structure of the statute as a coherent whole." ***State ex rel. Kalal v. Circuit Court***, 2004 WI 58 ¶45, 271 Wis. 2d 633, 281 N.W.2d 110. "Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage." *Id.* at ¶46.

# Chapter 804.12

## Motion to Compel Condition Precedent?



- Dismissal as a discovery sanction requires a finding of bad faith or egregious conduct, supported by a reasonable factual basis. See *Sentry Ins. v. Davis*, 2001 WI App 203, PP19-21, 247 Wis. 2d 501, 634 N.W.2d 553. Failure to comply with a circuit court scheduling order without a clear and justifiable excuse is egregious conduct. *Indus. Roofing Servs., Inc. v. Marquardt*, 2007 WI 19, ¶143, 299 Wis. 2d 81, 726 N.W.2d 898.

# Chapter 804

## Sanctions

- Reasonable notice may file motion
- To compel discovery
- Evasive or incomplete response may be deemed as failure to answer/respond/deny
- If motion is granted/denied then court may award costs
- Costs cannot be awarded without notice and hearing/opportunity to be heard on that issue

# Chapter 804

## Sanctions

- If party fails to admit (either doesn't respond or denies)
- And later truth/genuineness is proved
- Then costs may be awarded upon motion
- Unless...valid objection, no substantial importance, party denying had reasonable belief to prevail, or good cause for failing to admit

# Chapter 804

## Sanctions

- Available relief 804.12(2)
- If court enters order to compel, etc. and party does not...then
- Court may make just order....
- Matters deemed established
- Prohibit party from defending or pursuing claim
- Strike pleadings, dismiss case,
- Treat as a contempt of court

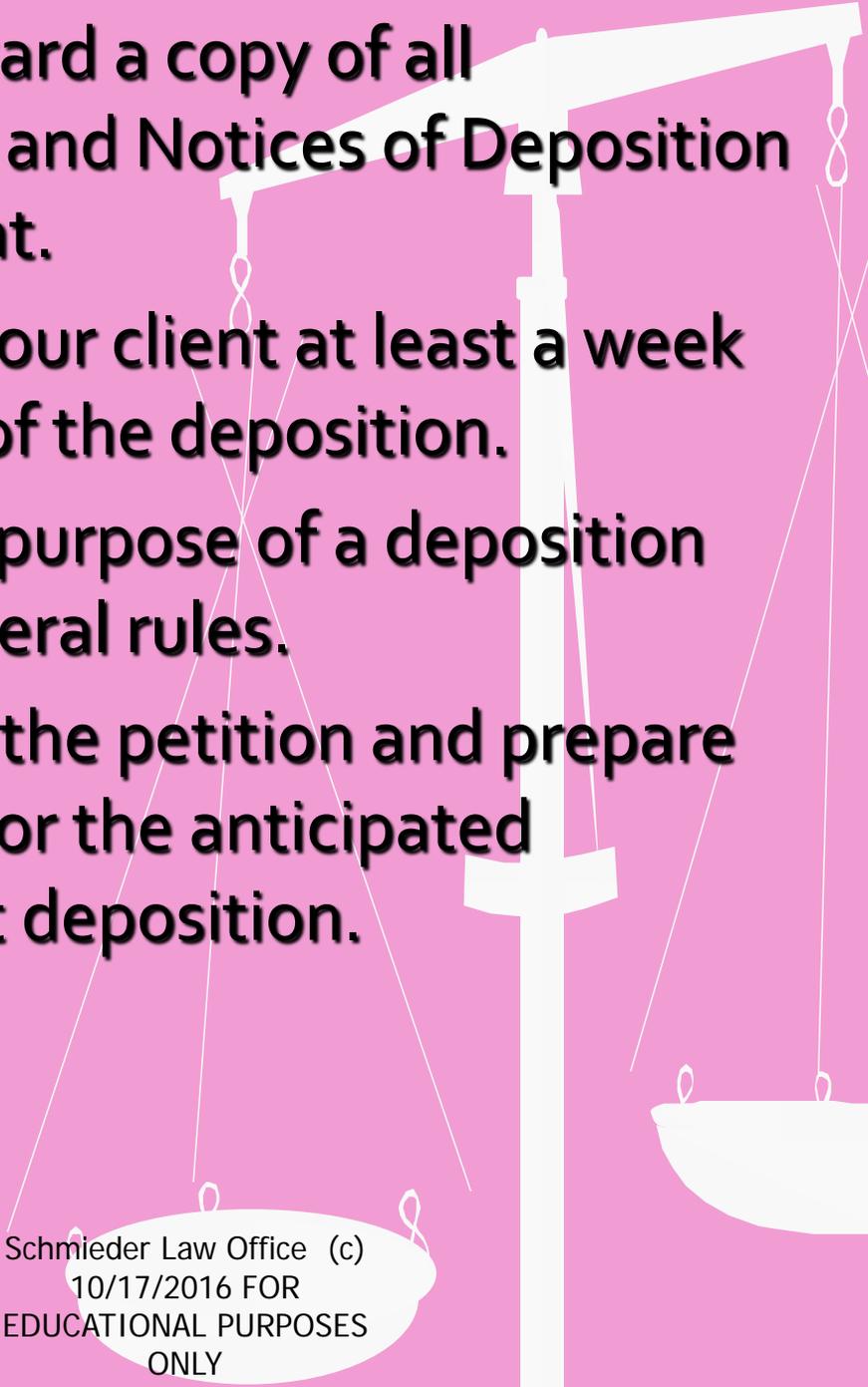
# Chapter 804

## Sanctions

- Dismissal as a sanction
- Disfavored in civil cases generally and extremely disfavored in Chapter 48
- Dane County Dep't of Human Servs. V. Mable K. 2013 WI 28, 346 Wis. 2d 396
- Evelyn C.R. v Tykila S., 2001 WI 110, 246 2d 1
- State v. Shirley E. 2006 WI 129, 298 Wis 2d 1

**They want to depose your client.**

# **What to do?**

- 
- **Timely forward a copy of all Subpoena's and Notices of Deposition to your client.**
  - **Meet with your client at least a week in advance of the deposition.**
  - **Discuss the purpose of a deposition and the general rules.**
  - **Go through the petition and prepare your client for the anticipated questions at deposition.**

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# To Rehab or Not To Rehab

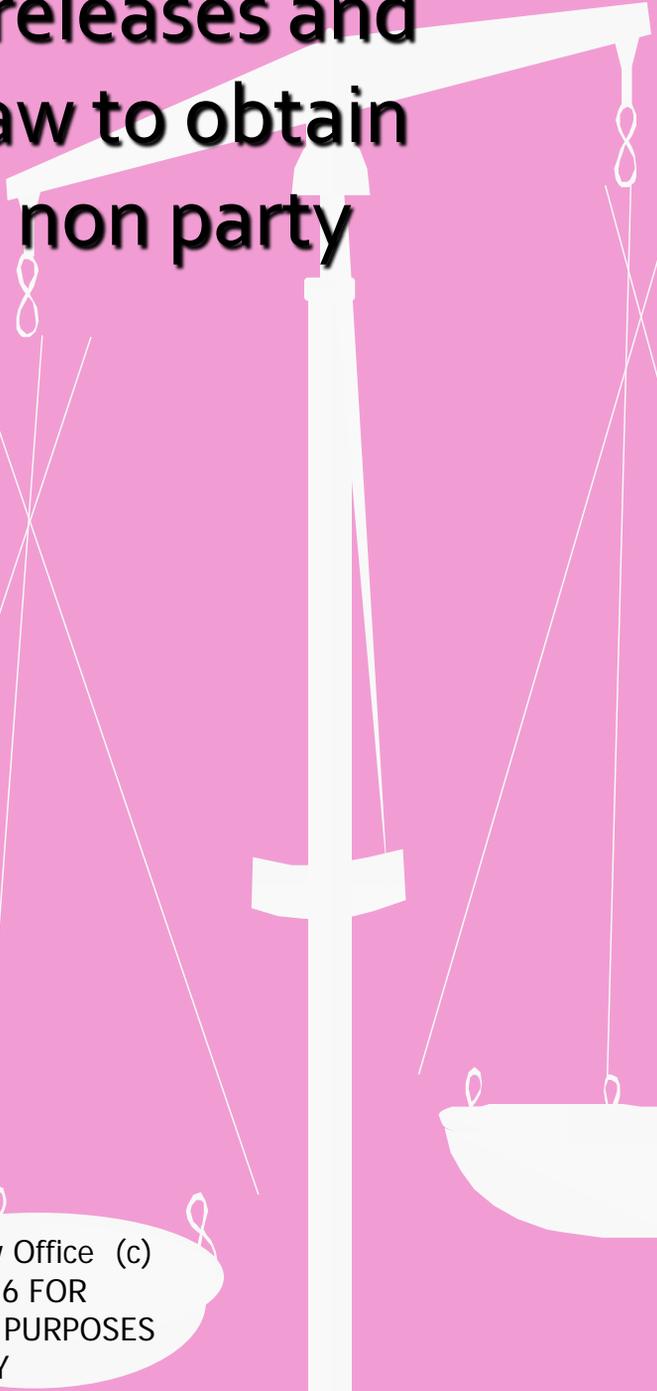
- If your client is deposed and answers poorly or incorrectly you are then faced with a strategic decision...do you rehabilitate your client at their own deposition?
- Why not....don't want show your hand – SOMETIMES little surprises is all we have 😊
- Why....if there's a potential that your client may not appear at trial you may be able to get the transcript in as a hearsay exception.
- Why....sometimes highlighting weaknesses in the state's case can create a favorable settlement...hold open, dismissal of one or more counts, etc.
- **RECOMMEND:** Correct wrong answers at deposition, if the error becomes known later,...file an affidavit to supplement the deposition transcript.

# Try not to fumble...

- Defaults incurred through the ill advice or negligence of counsel are to be relieved against as well as any others... the trial court has a discretion in such matters, but such discretion must be a legal discretion, and where the application is made in time, and presents a case of 'mistake, inadvertence, surprise, or excusable neglect,' accompanied by a verified answer alleging a good defense on the merits, it is a manifest abuse of discretion not to open the judgment upon reasonable terms. The duty of the trial court, sitting as a court of conscience, in such matters, is, as above indicated, "to do or secure substantial justice" between the parties, under all the circumstances. To do that, where a defendant is in default, having a good and conscionable defense, thus excused and presented, is to give him a trial or hearing upon the merits, upon such terms and conditions as to do no injustice to the opposite party. ***Whereatt v. Ellis***, 70 Wis. 207, 215, 35 N.W. 314 (1887), referencing *Cleveland v. Hopkins*, 55 Wis. 387, 13 N.W. 225 (1992).

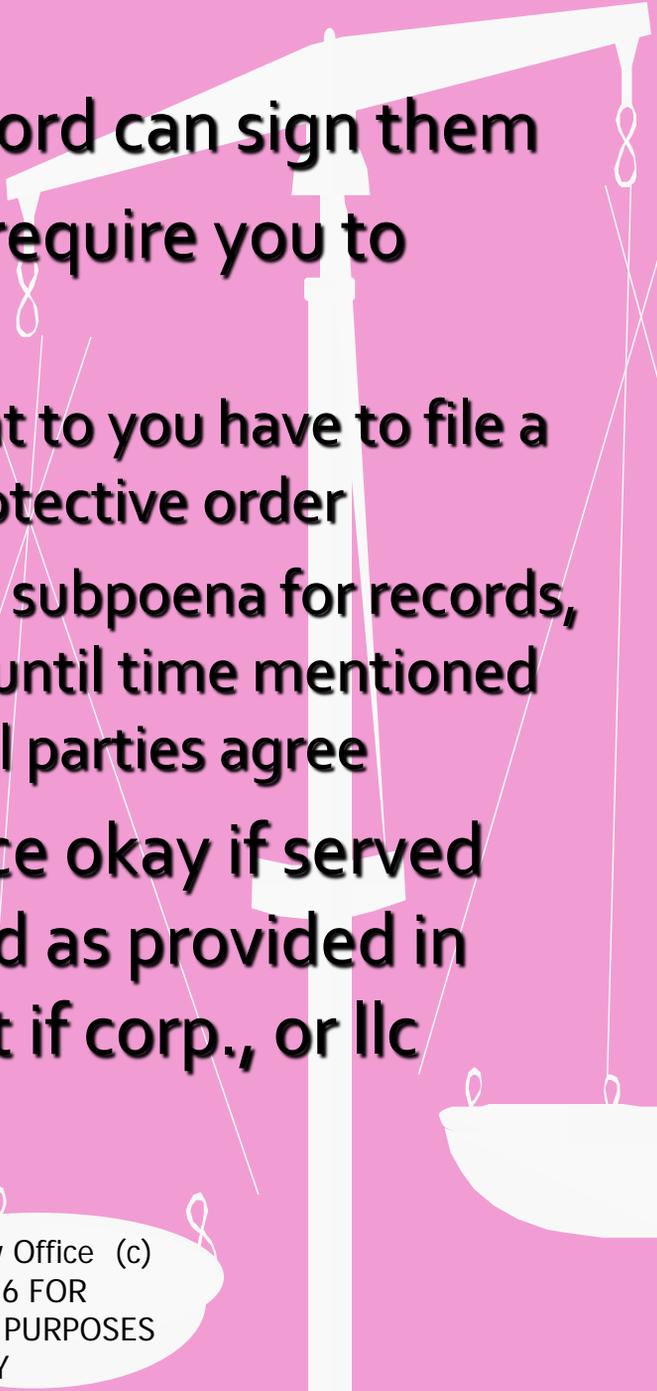
# Civil Procedure can work for you

- Use subpoenas, releases and Open Records Law to obtain documents from non party sources



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# Subpoena Basics



## ■ 805.07

- Attorneys of record can sign them
- Subpoenas can require you to produce records
  - If you don't want to you have to file a motion for a protective order
  - If it is a 3<sup>rd</sup> party subpoena for records, don't turn over until time mentioned has passed or all parties agree
- Substitute service okay if served under 885.03 and as provided in 801.11(1) (b), but if corp., or llc different rules.

# Subpoena Basics

- **885.01 Who can issue**
  - Judge, Clerk, Court Commissioner
  - DA, Atty Gen.,
  - Committee chairperson, etc.
  - Coroner, medical examiner
  - DCFS

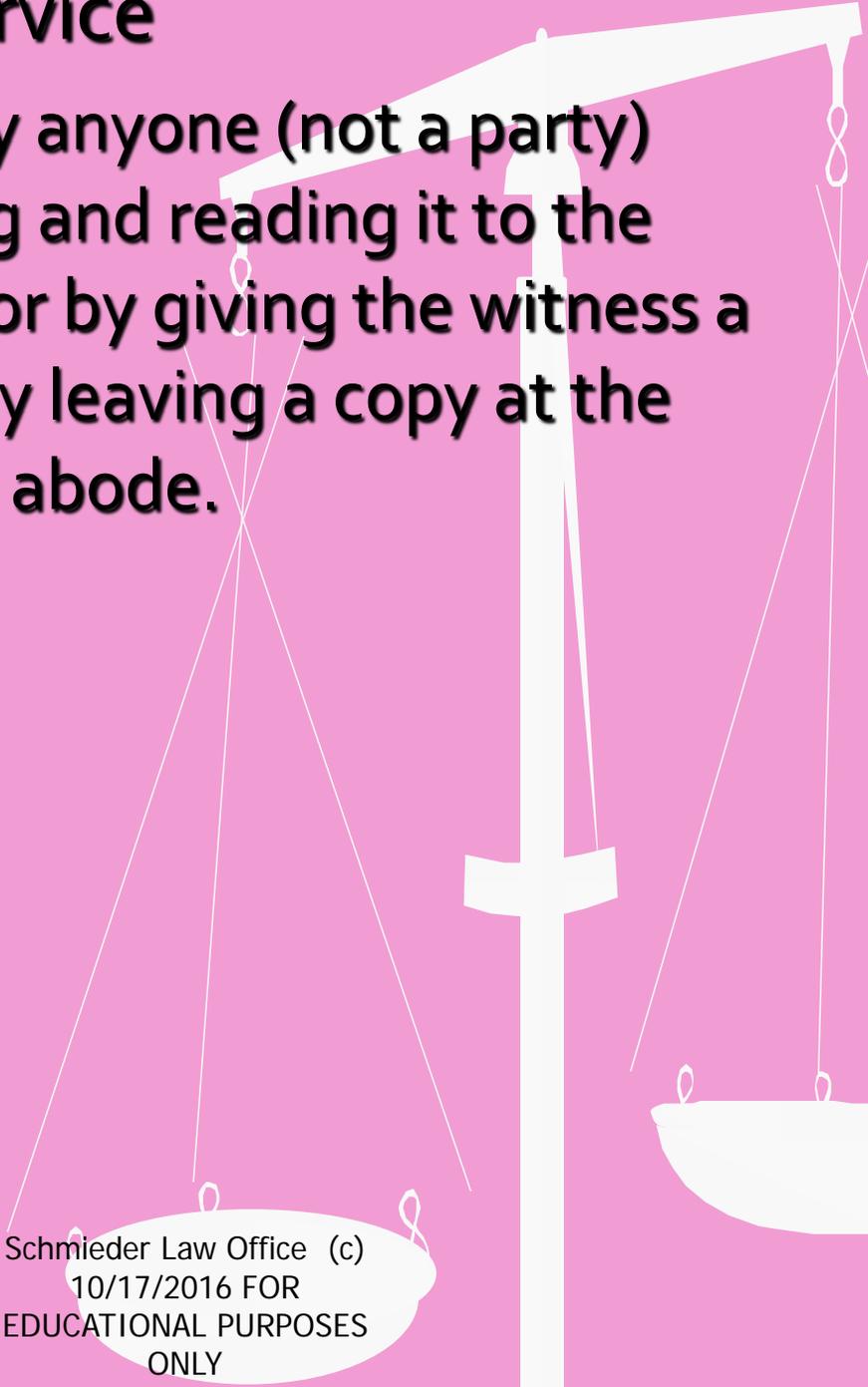


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# Subpoena Basics

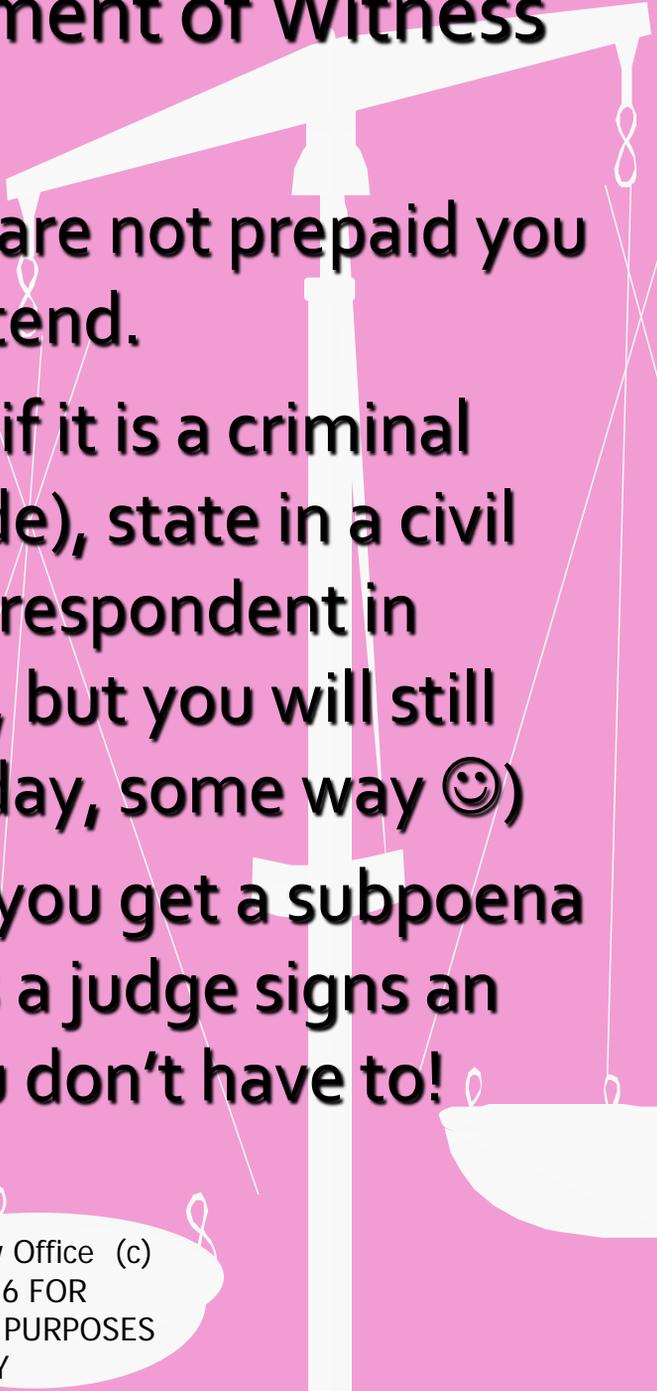
## ■ 885.03 Service

- Served by anyone (not a party) exhibiting and reading it to the witness, or by giving the witness a copy or by leaving a copy at the witness's abode.



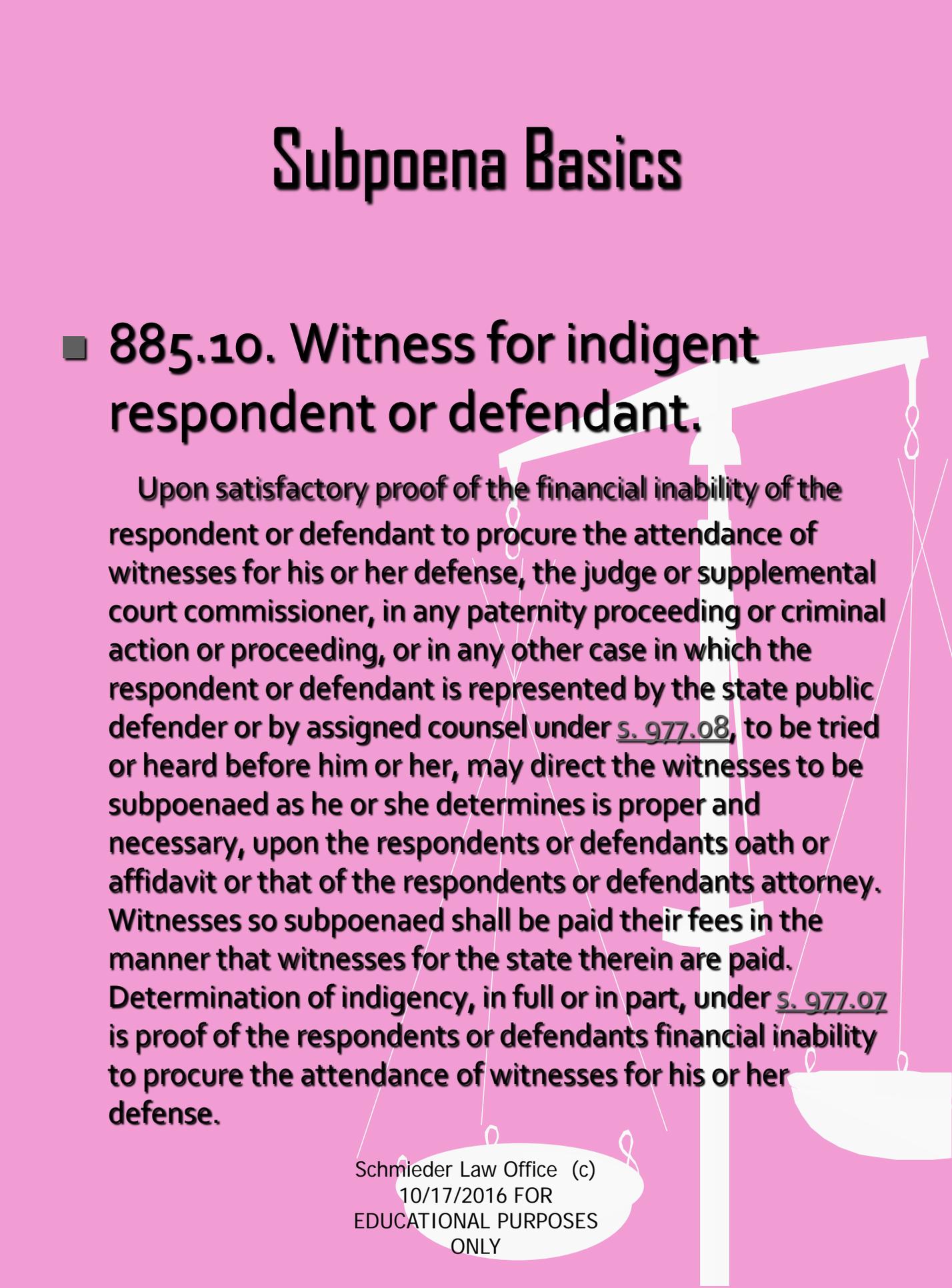
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# Subpoena Basics



- **885.06 Prepayment of Witness Fees**
  - Generally if you are not prepaid you don't have to attend.
  - No prepayment if it is a criminal action (either side), state in a civil action, indigent respondent in paternity action, but you will still get paid (some day, some way 😊)
  - Best practice, if you get a subpoena – honor it unless a judge signs an order saying you don't have to!

# Subpoena Basics



## ■ 885.10. Witness for indigent respondent or defendant.

Upon satisfactory proof of the financial inability of the respondent or defendant to procure the attendance of witnesses for his or her defense, the judge or supplemental court commissioner, in any paternity proceeding or criminal action or proceeding, or in any other case in which the respondent or defendant is represented by the state public defender or by assigned counsel under s. 977.08, to be tried or heard before him or her, may direct the witnesses to be subpoenaed as he or she determines is proper and necessary, upon the respondents or defendants oath or affidavit or that of the respondents or defendants attorney. Witnesses so subpoenaed shall be paid their fees in the manner that witnesses for the state therein are paid. Determination of indigency, in full or in part, under s. 977.07 is proof of the respondents or defendants financial inability to procure the attendance of witnesses for his or her defense.

# Subpoena Basics

- **814.67 Witness Fees**
  - **\$16.00 a day**
  - **.20 cents a mile**
  - **Maybe more, but maybe not**



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# Subpoena Basics

- **885.11 Disobedient Witness**
  - If you fail without reasonable excuse, party could sue and recover damages
  - Unexcused failure – court can have you arrested and brought to court to determine contempt
  - Contempt of court – punishable by fine up to \$200.00
  - If you don't show, pleadings could be struck or default judgment entered
  - Similar rules for depositions

# Treasure Hunting

- Don't rely only on the Department's file
- Get records from every service provider
- Get probation records – including chronological log, telephone memos, emails, and prior witness/probations statements
- When police reports are involved...if recent request 911 tapes or dispatch log (open records)

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# Treasure Hunting

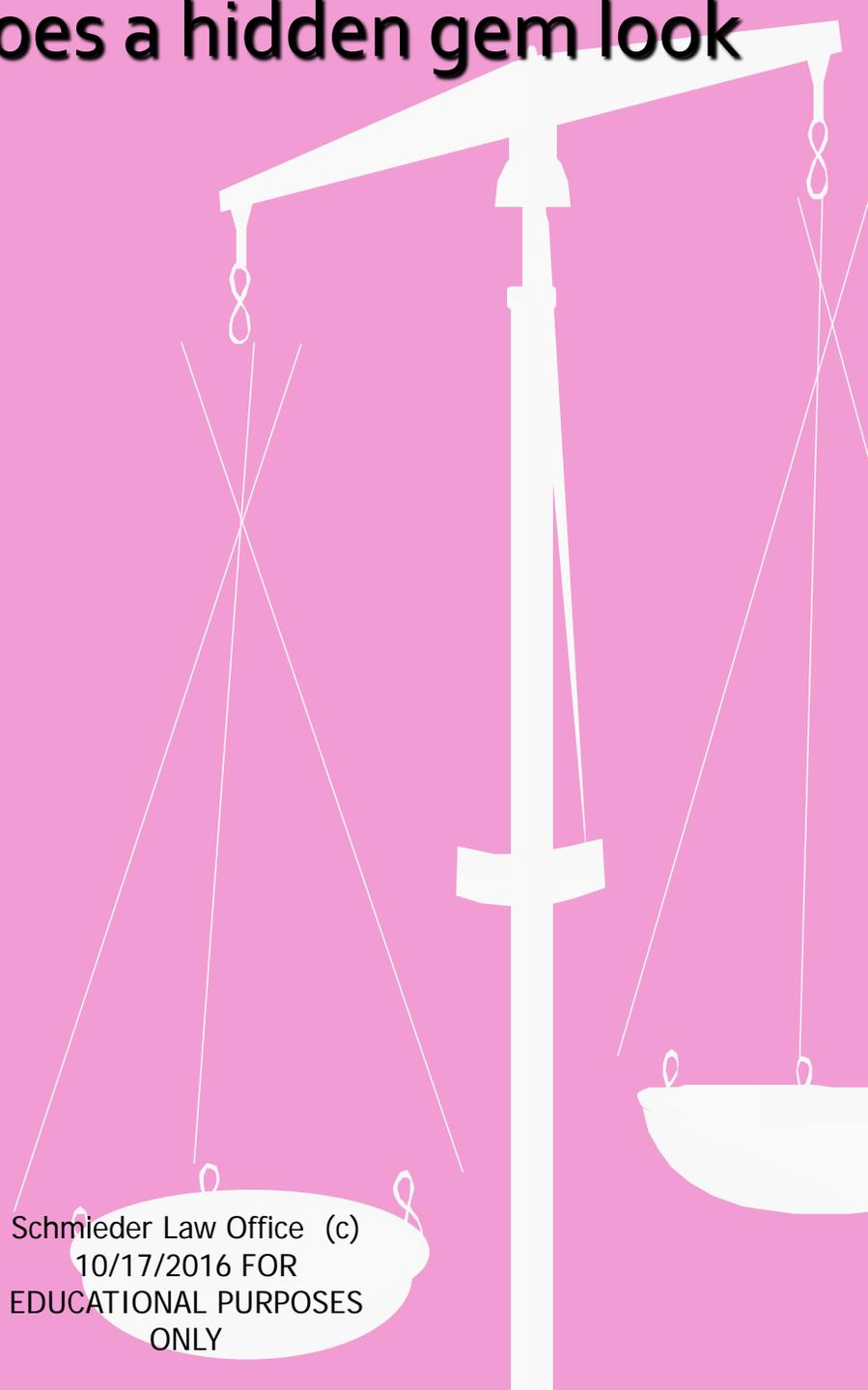
- Treatment records –
- Don't settle for just the treatment summary
- Get the entire file....left and right sides
- Medical Assistance authorizations
- Progress notes
- Appointment history



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# Treasure Hunting

- So what does a hidden gem look like?



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## TRIPLE AAA COUNSELING CENTER

We have current openings in our In Home Psychotherapy Program for children who meet the following criteria:

### Demographic Factors:

- ◆ Child is between the ages 3 to 21.
- ◆ Child has insurance through Medicaid, Badgercare, or a Forward Card

### Mental Health or Behavioral Factors:

- ◆ Child has a significant mental health or behavioral problem. Diagnoses and behaviors often treated by the in home psychotherapy program include: ADHD, Bipolar Disorder, Conduct Disorder, Depression, Anxiety, Adjustment Disorder, disruptive behaviors, oppositional behaviors.
- ◆ Child is experiencing difficulties in one or more of the following areas: family relationships, peer relationships, involvement with the legal system, school, impulse control, and/or self care.
- ◆ Child may also be experiencing violent or suicidal behavior.

### Commitment and Motivational Factors:

- ◆ The child is available for treatment 2-8 hours per week.
- ◆ Session time includes individual therapy with the child or adolescent as well as some family therapy.
- ◆ Family members will commit to treatment for 3 to 12 months, depending on need.

To make a referral, please fill out the bottom of this form and fax to our offices.

Attn: In Home Psychotherapy Program

Fax: [REDACTED]

You may also contact our offices directly with the following information.

Phone: [REDACTED]

Toll Free: [REDACTED]

Child's Name:

Preschool GIRL "A"

DOB:

3yrs 3 mos ago

Social Security Number:

000-00-0000

(Medical Assistance Number)

Parent/Guardian:

Bio Mom & Bio Dad

Address:

Foster PARENT Names, Address

Telephone:

F/P Phone

Referral Source:

Soc. Worker

Telephone:

Dept. Phone [REDACTED]

Brief description of concerns: ~~Child was born in foster care for over 2 years and has no biological parents yet contacted to have visitation.~~

Does the Parent/Guardian agree with the referral?  yes  no

\* Verbal [REDACTED] permission from the mother. given on

Bio Mom

[REDACTED]

# TRIPLE AAA COUNSELING CENTER

## SERVICES RECOMMENDED BY THE TREATMENT TEAM

1. Intensive In Home Treatment Program
2. Continuation of medication management
3. Continue working with school

Program Discharge Criteria: 90% of goals reached

Certified Psychotherapist: COUNSELOR Z Date: INTAKE INTERVIEW  
Signature

Psychiatrist or  
Psychologist Signature: SUPERVISOR T Date: FOUR DAYS LATER

\* I (We) have read the foregoing treatment plan and give my (our) consent to my (our) child receiving the treatment outlined above. I (We) will agree to participate in the treatment intervention outlined above.

Parental or Primary  
Care Givers Signature: FOSTER MOM Date: INTAKE INTERVIEW

# **TRIPLE AAA COUNSELING CENTER**

## **Treatment Plan**

### **Problem 1: Psychiatric Involvement**

**Description of Problem:** Client's outward expression of trauma in the form of anxiety, sleep disturbances and both Enuresis and Encopresis may benefit from pharmacological intervention.

#### **Short Term Goal:**

1. Evaluate and make the necessary referral(s) if the in-home team suspects that the client may be a good candidate for drug therapy.

**Long Term Goal:** Same as the short term goal.

**Plan:** The senior on this in-home team has extensive experience evaluating and referring clients for pharmacological intervention with significant success. He will either refer the client to the child psychiatrist at **AAA Counseling** or make the appropriate referral to a qualified child psychiatrist either working in private practice or with a regionally recognized institution that has shown success in working with other children this age and that the senior has personal knowledge of due to prior working relationships.

### **Problem 2: Trauma**

**Description of Problem:** Client suffers from moderate to high levels of physical and mental anxiety 3-5 days per week.

#### **Short Term Goal:**

1. The team will work with the client and her foster parents to develop strategies to help the client self-soothe or with the aid of a parent/adult regain a sense of physical integrity and personal safety.
2. Client's anxious symptomology will be reduced to 1-3 days per week.

**Long Term Goal:** Client will demonstrate mastery of the short term goals.

**Plan:** The team will use expressive therapies, games, art, sand play and role modeling to achieve the stated short and long term goals.

### **Problem 3: Aggressive Behaviors/Peer Interactions**

**Description of Problem:** Client's aggression becomes more prominent around weekly court ordered supervised visits. She also becomes controlling and aggressive with peers at day care.

#### **Short Term Goal:**

1. Client will learn non-violent means of expressing her anxiety and frustration with

## ***TRIPLE AAA COUNSELING CENTER***

2. The client will learn to respect the boundaries and personal space of others 3 of 5 times with prompts.
3. Client will learn to self-calm when she becomes agitated with prompts.

Long Term Goal: Improvement in the short term goals.

Plan: The team will use cognitive restructuring and role modeling, as well as therapeutic games, art and play to reduce and/or eliminate aggressive behaviors.

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Number 14

The client is a 3 year old female. Her birth parents were not available during the interview because of a pending TPR hearing, but based on the information from the social worker and foster parents there appeared to be no problems with her birth or any developmental delays. She was exposed to alcohol and tobacco during the pregnancy. It was reported that the client's speech was slightly delayed. It is suspected that this is due to her 4 year old sister being her primary care giver before her removal from the biological house hold.

Client currently attends a private daycare in \_\_\_\_\_ Her foster parents identified traumatic behaviors (i.e. constipation, incontinence), increased aggression and separation anxiety, all which intensify before and after weekly court ordered supervised visits with her biological father. As an infant the client was subjected to physical violence between the bio-parents prior to her first removal from the home at age 3 weeks and her second and final removal at age 5 months. It was reported that bio-mom is willing to terminate her parental rights but her bio-dad has indicated that he will object to the TPR. A lengthy court process is anticipated.

Client was age appropriately oriented to person, place and time. She was well groomed and dressed. Speech and eye contact were good. Answers to questions were logical and coherent but somewhat hesitant. Client was cooperative, degree of questioning easy but answers delayed or non-existent due to shyness. Client flirted with the interviewer throughout the interview. Her affect was bright and cheerful. Observed social skills were poor. Reported mood is age appropriate and that she is easily redirected when she is moody. Client's sleep patterns were reported to be disrupted as she has trouble going to sleep, wakes 2-3 times per night and is prone to nightmares. Energy level was reported as good, appetite and weight as consistent and self-esteem as age appropriate. It was reported that the client's anxiety level increases sharply prior to once per week supervised visits with her bio-dad. This is when she also becomes overly constipated and exhibits increased levels of aggression. Client has been known to wet herself upon seeing her bio-dad. No evidence of psychosis was reported. No current or past suicidal/homicidal ideations were reported.

Axis I:	309.4	Adjustment Disorder With Mixed Disturbance of Emotions and Conduct
	309.81	Posttraumatic Stress Disorder, Chronic, With Delayed Onset (R/O)
Axis II:		deferred
Axis III:		none
Axis IV:		severe (past), mild (present)
Axis V:		GAF= 55

SUPERVISOR T

DATE: 20 DAYS AFTER PLAN

Number 15

Client lives with her third set of foster parents. Her half sister, age 7, also lived in this foster home but has recently moved to her father's home. Her bio-mom resides in \_\_\_\_\_ and her bio-dad lives in \_\_\_\_\_. His contact with the client is limited to a 2-3 hour supervised visit once per week. Proceedings to terminate the parent's rights have

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## ***TRIPLE AAA COUNSELING CENTER***

been initiated. Bio-mom has agreed sign off on her parental rights but her father is planning to fight any TPR proceeding. It was reported that the client and her sister witnessed significant violence between the biological parents before being removed from their care. Both parents suffer from mental health issues and problems with substance abuse/dependence. Both the foster parents and the social worker reported that the client has problems with incontinence/constipation, increased aggression and disrupted sleep patterns/nightmares a day or two before, during and again a day or two after visits with her bio-dad. Client has received no prior psychiatric/psychological services. A psychiatric evaluation with \_\_\_\_\_ at \_\_\_\_\_ is scheduled for \_\_\_\_\_.

In-home psychotherapeutic services will work to reduce the client's trauma, deal with her aggressive behaviors and improve her ability to develop and maintain peer appropriate relationships, as well as to make suggestions to the foster parents as to alternate parenting techniques. The team will role model appropriate parent/child interaction. They will also work with the client's day care to address peer issues in that setting.

### **Number 17**

Trauma is the thread that ties together all of the client's issues. As previously noted the client and her sister were subjected to marital violence between their parents. Therapeutic techniques such as art, play and sand modalities to assess and mitigate the client's trauma as well as teaching her better ways to get her needs met and interact with others will be utilized. The team will also work to improve the couples parenting techniques, shoring up what is working and introducing them to different tools they may not be using through a psycho-educational model.

Strengths include the foster parents request for in-home services as such therapy is invasive at the very least and at times inconvenient, and their commit to parent the client, as they have expressed a desire to adopt the client once the TPR is finalized. The family's only weakness is their inability to protect the client from the effects that weekly visits with her bio-dad are having on her physical and mental integrity.

### **Number 18**

Client and her family are good candidates for in-home services because addressing now the level of trauma that the client lives with daily is preferable to waiting until the client gets in school and/or later starts the process of individualization (i.e. how she relates to others, how she sees herself in the world, development of healthy relationships and to become less aggressive with peers).

### **Number 19**

Expected Date of Termination: 12-15 months

After care plan: Transfer of services to a qualified outpatient therapist for both individual and family therapy may be indicated. Further recommendations maybe added as treatment progresses.

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## In-Home Progress Notes

Date: 6/5                      Client:                      Modality: family  
Frequency: bi-weekly      Technique: CT                      Symptoms (affect): flat  
Functional Status (mental status): shy

### Diagnosis:

Axis I: 309.4 Adjustment Disorder With Mixed Disturbance of Emotions and Conduct  
          309.81 Posttraumatic Stress Disorder, Chronic, With Delayed Onset

Axis II:                      deferred

Axis III:                     none

Axis IV:                    severe (past), mild (present)

Axis V:                     GAF= 55

\*\*\*\*\*  
(N) Narrative                      (A) Assessment                      (P) Plan

Present: client, foster parents, senior, secondary  
\*\*\*\*\*

(N) Conducted the intake interview.

(A) n/a

(P) Commence in-home services when approved. \*\*

Prognosis (is improvement likely): n/a

\*\*\*\*\*  
Senior Therapist Signature: Counselor Z                      Date:

Secondary Therapist Signature: Counselor X                      Date:

Note written by: Senior / Secondary (circle one)

# TRIPLE AAA COUNSELING CENTER

## In-Home Progress Notes

Date: 7/1/ Client: Modality: family  
Frequency: bi-weekly Technique: art, music Symptoms (affect): flat  
Functional Status (mental status): tenuous  
Diagnosis: (provisional)  
Axis I: 309.4 Adjustment Disorder With Mixed Disturbance of Emotions and Conduct  
309.81 Posttraumatic Stress Disorder, Chronic, With Delayed Onset  
Axis II: deferred  
Axis III: none  
Axis IV: severe (past), mild (present)  
Axis V: GAF= 55

\*\*\*\*\*  
(N) Narrative (A) Assessment (P) Plan  
Present: client, parents, senior, secondary  
\*\*\*\*\*

(N) This was the in-home team's first session with the client. Today was her supervised visit with her bio-dad and she presented as some what regressed. The team talked with her parents about client issues and to answer any of their questions while using art and music modalities to start the development of the therapeutic relationship.

(A) If the client's external queues are any indication of the trauma that she has/is suffering from her internal strife must be intense.

(P) Continue with treatment plan. \*\*\*\*\*

Prognosis (is improvement likely): fair

\*\*\*\*\*  
Senior Therapist Signature: Counselor Z Date:

Secondary Therapist Signature: Counselor X Date:

Note written by: Senior/Secondary (circle one)

# TRIPLE AAA COUNSELING CENTER

## In-Home Progress Notes

Date: 7/6/                      Client:                      Modality: family  
Frequency: bi-weekly      Technique: play                      Symptoms (affect): flat  
Functional Status (mental status): guarded

Diagnosis: (provisional)

Axis I: 309.4 Adjustment Disorder With Mixed Disturbance of Emotions and Conduct  
309.81 Posttraumatic Stress Disorder, Chronic, With Delayed Onset

Axis II: deferred

Axis III: none

Axis IV: severe (past), mild (present)

Axis V: GAF= 55

\*\*\*\*\*  
(N) Narrative                      (A) Assessment                      (P) Plan  
Present: client, foster parents, senior, secondary

\*\*\*\*\*  
(N) During check-in the client's foster parents reported no unusual behaviors. They did say that the client has been suffering from nightmares. The in-home team used the session to continue developing rapport and the therapeutic relationship with the client.

(A) Client is slowly beginning to warm to the in-home team.

(P) Continue with treatment plan.

Prognosis (is improvement likely):

Senior Therapist Signature: Counselor Z                      Date:

Secondary Therapist Signature: Counselor X                      Date:

Note written by: Senior/Secondary (circle one)



# TRIPLE AAA COUNSELING CENTER

## In-Home Progress Notes

Date: 7/20 Client: Modality: family  
Frequency: bi-weekly Technique: play Symptoms (affect): fair  
Functional Status (mental status): flirtatious

Diagnosis: (provisional)

Axis I: 309.4 Adjustment Disorder With Mixed Disturbance of Emotions and Conduct  
309.81 Posttraumatic Stress Disorder, Chronic, With Delayed Onset

Axis II: deferred

Axis III: none

Axis IV: severe (past), mild (present)

Axis V: GAF= 55

.....  
(N) Narrative (A) Assessment (P) Plan

Present: client, foster parents, senior, secondary  
.....

(N) Check-in with the client's parents revealed nothing out of the ordinary. They did say that her post visit trauma did not last as long as in the past. The in-home team continued to develop rapport with the client and her family and to lay the ground work for the therapeutic relationship.

(A) Client's weekly retraumatization due to mandatory supervised visits with her bio-dad only serve to continue to keep her in a perpetual state of stress which hampers normal childhood development.

(P) Continue with treatment plan. ....

Prognosis (is improvement likely) poor, marginal, fair, good, excellent

Senior Therapist Signature: Counselor Z Date:

Secondary Therapist Signature: Counselor X Date:

Note written by: Senior Secondary (circle one)

## TRIPLE AAA COUNSELING CENTER

### In-Home Progress Notes

Date: 7/22 Client: Modality: individual  
Frequency: bi-weekly Technique: art Symptoms (affect): flat  
Functional Status (mental status): withdrawn  
Diagnosis: (provisional)  
Axis I: 309.4 Adjustment Disorder With Mixed Disturbance of Emotions and Conduct  
309.81 Posttraumatic Stress Disorder, Chronic, With Delayed Onset  
Axis II: deferred  
Axis III: none  
Axis IV: severe (past), mild (present)  
Axis V: GAF= 55

.....  
(N) Narrative (A) Assessment (P) Plan  
Present: client, senior, secondary  
.....

(N) The in-home team met with the client at daycare immediately after her weekly supervised visit with bio-dad. She was not responsive to the team, had a blank look on her face and did not respond when spoken to. This is in contrast to when the team meets with her at home where she appears happy, smiles a lot and is talkative. Client joined her work group while they were coloring. The team joined her but she did not outwardly acknowledge the presence of team. When it time to move to story time she stayed with the team even after several attempts by her teacher to have her join her peers. Client began to respond to the team and eventually joined the story group but remained non-verbal.

(A) This is the first time the team has observed the client after a visit with bio-dad has occurred. Client presented herself as suffering from trauma.

(P) Continue with treatment plan.

Prognosis (is improvement likely): poor, marginal, fair, good, excellent

Senior Therapist Signature: Counselor Z Date:

Secondary Therapist Signature: Counselor X Date:

Note written by: Senior/Secondary (circle one)

# TRIPLE AAA COUNSELING CENTER

## Telephone Contact Note

Date: 7/23 Client: Modality: n/a  
Frequency: bi-weekly Technique: n/a Symptoms (affect): n/a  
Functional Status (mental status): n/a

### Diagnosis:

Axis I: 309.4 Adjustment Disorder With Mixed Disturbance of Emotions and Conduct  
309.81 Posttraumatic Stress Disorder, Chronic, With Delayed Onset

Axis II: deferred

Axis III: none

Axis IV: severe (past), mild (present)

Axis V: GAF= 55

Client's foster father called today to inform the senior that after the client's nap on Wednesday at daycare she beat up another peer while he was being held down on the ground and had to be forcibly pulled off of him. He expressed concerns about her status at daycare and vented frustration about not being able to do anything to stop the visits with her biological dad. The senior suggested that he call the foster care supervisor to see if there any options available. The senior offered to run interference with the client's court worker to see if a temporary suspension of the visits is possible. He also informed both foster dad and the daycare that the in-home team would suspend sessions at daycare for the time being to reduce any possible stress that their presence might have caused as her visit with bio-dad preceded the session. The senior also informed the program manager at Innovative Counseling of the situation

Senior Therapist Signature: Counselor Z Date:

Secondary Therapist Signature: Counselor X Date:

Note written by: Senior/Secondary (circle one)

# TRIPLE AAA COUNSELING CENTER

## In-Home Progress Notes

Date: 7/27 Client: Modality: family  
Frequency: bi-weekly Technique: cognitive play Symptoms (affect): flat  
Functional Status (mental status): silly  
Diagnosis: (provisional)

Axis I: 309.4 Adjustment Disorder With Mixed Disturbance of Emotions and Conduct  
309.81 Posttraumatic Stress Disorder, Chronic, With Delayed Onset

Axis II: deferred

Axis III: none

Axis IV: severe (past), mild (present)

Axis V: GAF= 55

\*\*\*\*\*  
(N) Narrative

(A) Assessment

(P) Plan

Present: client, parents, juvenile court worker, parent aid, senior, secondary  
\*\*\*\*\*

(N) A discussion was had about two court hearings this week that may change the supervised visits the client has with her bio-dad and to set a court date for the TPR trial. Everyone was in agreement about the level of trauma the client suffers from and what increasing the frequency and length of the visits could do to her. The secondary spent time working with the client on the therapeutic relationship and rapport building as well as her ability to follow rules.

(A) The team is taking a very slow approach in gaining the client's trust.

(P) Continue with treatment plan.

Prognosis (is improvement likely) poor, marginal, fair, good, excellent

Senior Therapist Signature: Counselor Z Date:

Secondary Therapist Signature: Counselor X Date:

Note written by: Senior/Secondary (circle one)

# TRIPLE AAA COUNSELING CENTER

## Testimony Report

Date: 7/29                      Client:                      Modality: n/a  
Frequency: bi-weekly      Technique: n/a                      Symptoms (affect): n/a  
Functional Status (mental status): n/a  
Diagnosis: (provisional)  
Axis I: 309.4 Adjustment Disorder With Mixed Disturbance of Emotions and Conduct  
          309.81 Posttraumatic Stress Disorder, Chronic, With Delayed Onset  
Axis II:                      deferred  
Axis III:                     none  
Axis IV:                    severe (past), mild (present)  
Axis V:                    GAF= 55

.....  
.....  
Late on                      the senior was called by the juvenile court worker and asked to testify  
at today's permanency plan hearing at the request of Assistant Attorney                      .  
The senior was not able to offer his testimony in personal but did so via telephone.

Senior Therapist Signature: Counselor Z                      Date:                      /                      /

Secondary Therapist Signature: Counselor X                      Date:                      /                      /

Note written by: Senior/Secondary (circle one)

# TRIPLE AAA COUNSELING CENTER

## In-Home Progress Notes

Date: 7/29 Client: Modality: family  
Frequency: bi-weekly Technique: play Symptoms (affect): animated  
Functional Status (mental status): coy  
Diagnosis: (provisional)  
Axis I: 309.4 Adjustment Disorder With Mixed Disturbance of Emotions and Conduct  
309.81 Posttraumatic Stress Disorder, Chronic, With Delayed Onset  
Axis II: deferred  
Axis III: none  
Axis IV: severe (past), mild (present)  
Axis V: GAF= 55

\*\*\*\*\*  
(N) Narrative (A) Assessment (P) Plan  
Present: client, foster parents, senior, secondary

\*\*\*\*\*  
(N) During check-in the client's parents reported no changes in behavior from the usual weekly cycle surrounding her visit with bio-dad. Mom shared that she felt that the senior's testimony was very helpful in the court's decision not to increase the length or frequency of the client's visits with bio-dad. Individually the client was engaged in a variety of activities to continue with the development of the therapeutic relationship.

(A) The in-home team's job is made exponentially more difficult with the retraumatization that occurs in connection with her weekly visits with bio-dad.

(P) Continue with treatment plan \*\*\*\*\*

Prognosis (is improvement likely): ~~poor~~, marginal, fair, good, excellent

Senior Therapist Signature: Counselor Z Date:

Secondary Therapist Signature: Counselor X Date:

Note written by: Senior/Secondary (circle one)

# TRIPLE AAA COUNSELING CENTER

## In-Home Progress Notes

Date: 8/3/ Client: Modality: family  
Frequency: bi-weekly Technique: play Symptoms (affect): bright  
Functional Status (mental status): animated

Diagnosis: (provisional)

Axis I: 309.4 Adjustment Disorder With Mixed Disturbance of Emotions and Conduct  
309.81 Posttraumatic Stress Disorder, Chronic, With Delayed Onset

Axis II: deferred

Axis III: none

Axis IV: severe (past), mild (present)

Axis V: GAF= 55

\*\*\*\*\*  
(N) Narrative (A) Assessment (P) Plan

Present: client, foster parents, senior

\*\*\*\*\*  
(N) After check-in with the client's foster parents the senior engaged the client in a couple of play activities to foster a strong therapeutic relationship. Her foster parents reported a good weekend with no nightmares. The senior was able to keep the client engaged for most of the session which is remarkable for someone her age.

(A) A strong therapeutic relationship is imperative for the trauma work to come.

(P) Continue with treatment plan. \*\*\*\*\*

Prognosis (is improvement likely) ~~poor~~, ~~marginal~~, ~~fair~~, ~~good~~, ~~excellent~~

Senior Therapist Signature: Counselor Z Date: \_\_\_\_\_

Secondary Therapist Signature: Counselor X Date: \_\_\_\_\_

Note written by: Senior/Secondary (circle one)

# TRIPLE AAA COUNSELING CENTER

## In-Home Progress Notes

Date: 8/5/                      Client:                      Modality: family  
Frequency: bi-weekly      Technique: play                      Symptoms (affect): animated  
Functional Status (mental status): distracted  
Diagnosis: (provisional)  
Axis I: 309.4 Adjustment Disorder With Mixed Disturbance of Emotions and Conduct  
          309.81 Posttraumatic Stress Disorder, Chronic, With Delayed Onset  
Axis II:                      deferred  
Axis III:                     none  
Axis IV:                    severe (past), mild (present)  
Axis V:                    GAF= 55

\*\*\*\*\*  
(N) Narrative                      (A) Assessment                      (P) Plan  
Present: client, foster parents, senior

\*\*\*\*\*  
(N) During check-in with the client's parents they shared that her reported aggression after her supervised visit with bio-dad was less than usual. Individually the senior focused on strengthening the therapeutic relationship and rapport building.  
(A) Client is beginning to reveal a few behavioral quirks. She often answers "I don't know" to questions that she does know the answers to. Client also has issues organizing "free play" time.

(P) Continue with treatment plan \*\*\*\*\*  
Prognosis (is improvement likely)? poor, marginal, fair, good, excellent

Senior Therapist Signature: Counselor Z                      Date:

Secondary Therapist Signature: Counselor X                      Date:

Note written by: Senior/Secondary (circle one)

# TRIPLE AAA COUNSELING CENTER

## In-Home Progress Notes

Date: 8/10/ Client: Modality: family  
Frequency: bi-weekly Technique: play Symptoms (affect): fake  
Functional Status (mental status): distant  
Diagnosis: (provisional)  
Axis I: 309.4 Adjustment Disorder With Mixed Disturbance of Emotions and Conduct  
309.81 Posttraumatic Stress Disorder, Chronic, With Delayed Onset  
Axis II: deferred  
Axis III: none  
Axis IV: severe (past), mild (present)  
Axis V: GAF= 55

\*\*\*\*\*  
(N) Narrative (A) Assessment (P) Plan  
Present: client, foster parents, senior, secondary  
\*\*\*\*\*

(N) The in-home team met with the client and her foster parents, letting them know that for the time being this will be the last in-home session. They had many questions about why, how could the senior continue to provide services in another capacity and concerns about the impact that this could have on the pending motion to suspend supervised visits with her bio-dad. Unfortunately the senior did not have many answers for them at this point. For the balance of the session the team met with the client individually as a general wind down to possibly ending services.

(A) Client's foster parents are very upset at the turn of events that this denial could bring.  
(P) Therapy has been discontinued. \*\*\*\*\*

Prognosis (is improvement likely): poor, marginal, fair, good, excellent

Senior Therapist Signature: Counselor Z Date:

Secondary Therapist Signature: Counselor X Date:

Note written by: Senior / Secondary (circle one)

# TRIPLE AAA COUNSELING CENTER

## Out Patient Progress Notes

Date: 9/2, Client: I Modality: family  
Frequency: bi-weekly Technique: play Symptoms (affect): fair  
Functional Status (mental status): cooperative

**Diagnosis:** (provisional)

Axis I: 309.4 Adjustment Disorder With Mixed Disturbance of Emotions and Conduct  
309.81 Posttraumatic Stress Disorder, Chronic, With Delayed Onset

Axis II: deferred

Axis III: none

Axis IV: severe (past), mild (present)

Axis V: GAF= 55

\*\*\*\*\*  
(N) Narrative (A) Assessment (P) Plan  
Present: client, foster dad, therapist  
\*\*\*\*\*

(N) Even though this writer has already been working with the client in her home, several conditions warranted caution by the counselor. First, there has been a gap in services, secondly the counselor was utilizing office space provided by . Soc. Servs ., and thirdly the room used was previously used by . Soc. Servs ., to conduct court ordered supervised visits by the client's biological father. The session was used to determine the status of the therapeutic relationship and to begin the establishment of rules to be used in the space provided as the previous venue for service delivery was a more comfortable environment for the client. Client spent a lot of time getting accustomed to the new environment.

(A) Given the client's age and level of traumatic experiences this mode of service delivery may not be suitable for long term efficacy.

(P) Continue with treatment plan. \*\*\*\*\*

Prognosis (is improvement likely): ~~poor~~, marginal, fair/excellent

Senior Therapist Signature: Counselor Z Date:

Secondary Therapist Signature: Counselor X Date:

Note written by: Senior/Secondary (circle one)

## TRIPLE AAA COUNSELING CENTER

SOCIAL SERVICES DEPT :

July 24

RE: A

Dear SOCIAL WORKER

I am writing this with the hopes that it can be presented by you to the court during the pending hearing scheduled for . I will attempt to briefly outline what the in-home team have seen thus far in the brief time that they have been working with "A" and concerns for issues to be reviewed during the hearing.

During the short time that the in-home team has been working with "A" she has quickly moved from being hesitant about the intentions of the in-home team to sharing her home with them, talking, laughing, playing games, doing art activities, etc. But none of this interaction has yet been able to focus on her trauma and anxiety. On . the in-home team experienced for the first time her demeanor first hand after a visit with her biological father. What they saw contrasted with the client that they see at her home as she was non-verbal, withdrawn, displayed mechanical body movements and an overall affect of one who has just experienced something very traumatic. We all know that by the end of that day she became physically violent with a peer at daycare and had to be restrained.

What the in the home team is beginning to see is a pattern of weekly retraumatization as evidenced by physical and mental abnormalities leading up to the day of the visit which have been documented by the foster parents and post visits behaviors that include more aggression and nightmares. It is the opinion of the in-home team that the client "A" experiences a moderate to high level of trauma everyday that has become her "normal" and that this trauma spikes on the days of visits. In essence she experiences higher than average trauma three to five days per week with only a few days to recover. This higher than normal stress level continually bathes her brain in stress hormones and retards proper brain development for a child her age.

While recognizing the sanctity of the usual bond between biological parents and their children the in-home team is suggesting that weekly visits with her biological father be

## ***TRIPLE AAA COUNSELING CENTER***

suspended for a period of time to allow the in-home team to assess and work with the client's trauma level without this repeated weekly cycle of retraumatization. They are not suggesting that visits be ended indefinitely but are asking for a three to six month "working" suspension after which time the senior therapist in the case will report to the court benefits and/or detriments of the suspension to aid the court in making further decisions in what course to choose that will be the most efficacious for the client.

The senior therapist is available for further consultation with yourself or the court should that be necessary.

Sincerely,

Counselor Z

## ***TRIPLE AAA COUNSELING CENTER***

Division of Health Care Access and Accountability  
1 West Wilson Street  
PO Box 309  
Madison, WI 53701-0309

RE: "A"  
PA

Dear

This letter is asking for your reconsideration of the denial of the above listed PA. The understanding is that ForwardHealth believes that outpatient therapy would be just as effective as in-home therapy in this case and that the continued trauma being experienced by the client will impede progress in therapy. As the performing therapist I do not believe this to be the case. Please allow me to address this on two fronts, first a general reminder as to why in-home therapy is being offered and requested as a treatment modality, and second how the legal ramifications that denial is likely to impact this client.

It is a fact that clients and their families are most comfortable in their own homes and are more open to suggestion of change when in their environment. This is especially important when considering the level of trauma that "A" experienced/is experiencing, especially at her age and considering the amount of anxiety she experiences outside of her current home. When engaging her and her foster family the therapists are joining a family system vs. the family joining an unknown system at an office building. This level of involvement allows the therapist to observe the client's aggression, grandiosity, and withdrawing behaviors in the home and to address these behaviors in relationship to parenting and interactions with others. The team has also been present to model and coach in detail on how to manage A'S behavior in her home while behaviors are occurring. It is believed by this practitioner, the county social services and the court that providing treatment in-home provides maximum impact. In-home services has also allowed the court to gain a more complete picture of the client's functioning and has led to the court making different decisions regarding visitation and placement.

## **TRIPLE AAA COUNSELING CENTER**

From a legal perspective, a trial for termination of parental rights is scheduled for later this month. On 10/17/2016 this writer was asked to testify during a placement hearing in which it would be determined if once weekly one hour supervised visits with her biological father would be expanded to twice weekly two hour visits. Because of this writer's observations, professional expertise and testimony, a change in visits was not permitted. The client shows severe aggression, emotional upset and physical symptoms surrounding the time of visits. An increase in visits would have only increased these symptoms. Without his testimony it was speculated that the increase in frequency and duration of visits would have happened, thus adding significantly to the trauma that the client is already experiencing. If the team had not been working with the family and client this would have been impossible to assess. On 10/17/2016 this writer was called by the client's guardian ad litem (GAL) to confirm the concerns evidenced by his testimony. This writer was then informed by the GAL that because of his testimony a motion was being made to suspend weekly visits for a period varying from 30 to 90 days to allow this writer to better gauge the client's level of trauma as the weekly visits retraumatize the client every time they occur.

The team is asking for the approval of this first PA due to the legal issues listed above. It is this therapist's professional, clinical opinion that in-home services are the best option for this client and family. Treatment modalities will utilize play and expressive therapies to address the client's aggressive behaviors by teaching her how to channel her aggression in ways where she is not a threat to her peers, cognitive restructuring to help her come to a workable understanding that she is safe in her current environment and cognitive therapy for the foster, soon to be adoptive parents, to be able to see the client's world through her eyes and to adjust parenting techniques that will supplement the in-home team's services. Not authorizing in-home services would send a message to the courts that the client is not suffering from trauma, opening the door for a successful defense to defeat the termination of parental rights trial. In addition, it will not give the team the opportunity to work with the client when visits are not taking place and potentially make progress on her symptoms. It is important to remember that the client was removed from the home of the biological parents at both age 9 days and 5 months and that the client has not been in the care of either biological parent since. Should the client continue to show as severe symptoms in the absence of visits, the team would discontinue services and refer the family elsewhere.

Approval of in-home therapy services would give credence to what all other service providers have observed over the past 3 years in the client's life and give her an opportunity to begin the process of recovery in the least restrictive environment. It is the professional, clinical opinion of this writer that in-home services are required for this family. The client meets the criteria and the need is clearly demonstrated.

Please contact this writer if other concerns or clarifications are required.

Respectfully,

**COUNSELOR Z**

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# DEPOSITION EXCERPT

## BIAS AND BELIEVABILITY – MUTUALLY EXCLUSIVE

**Q:** On the page where it indicates other household or family members, there was sufficient space, would you agree, for them (f/p) to list information with regards to both the foster parents and the birth parent members?

**A:** Birth parents aren't part of the household.

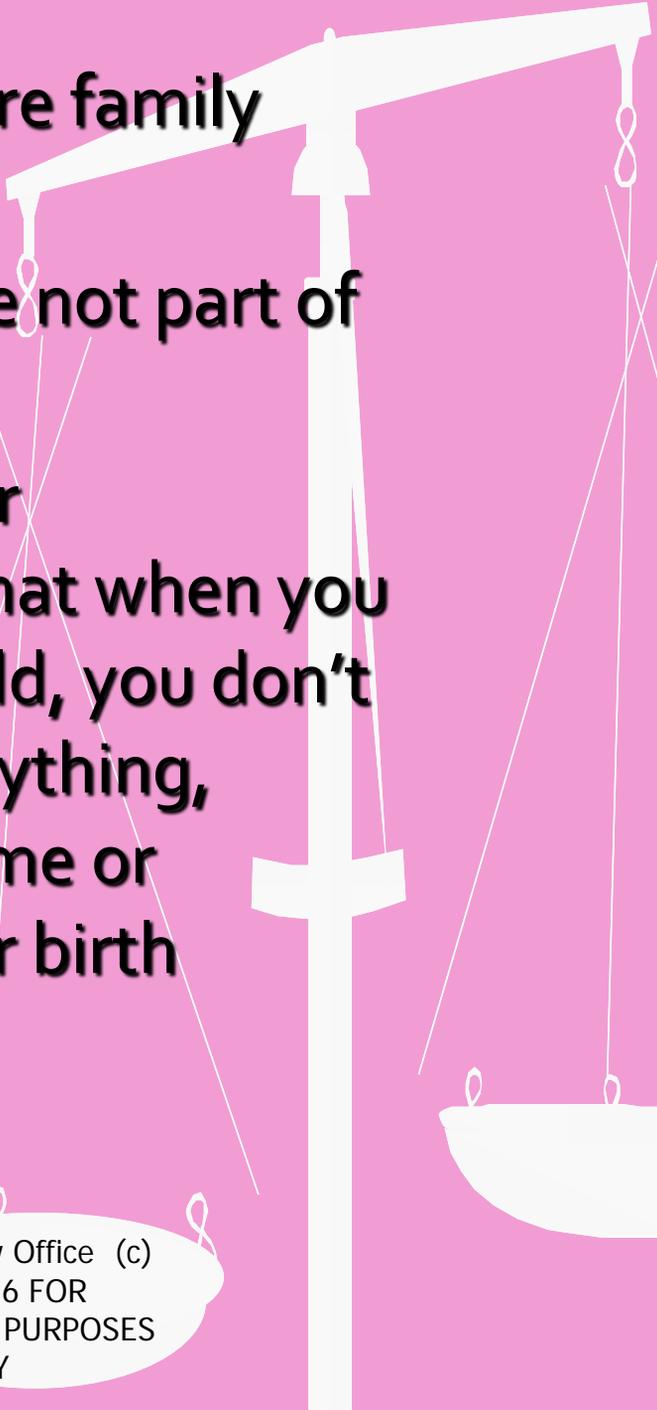
# DEPOSITION EXCERPT

## BIAS AND BELIEVABILITY – MUTUALLY EXCLUSIVE

Q: But they are family members?

A: But they're not part of the household.

Q: So it's your understanding that when you treat a foster child, you don't need to know anything, including the name or existence of their birth parents?



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# DEPOSITION EXCERPT

## BIAS AND BELIEVABILITY – MUTUALLY EXCLUSIVESIVE

**Q:** You agree that the child has attached to her foster parents, and her foster parents have bonded to the child?

**A:** Yes.

**Q:** How did you make that determination?

**A:** I look at how she approaches them, the fact that she listens to them, seeks them for comfort, she's not aggressive with them. Through my observations of many children.

# DEPOSITION EXCERPT

## BIAS AND BELIEVABILITY – MUTUALLY EXCLUSIVE

**Q:** Why haven't you viewed the visitations that were recorded of the child and her birth father?

**A:** What would you hope that I could glean from that? (not a good idea for a witness to be coy, argumentative or try to battle wits with the examiner..someone always gets hurt, and usually it is the witness!)

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# DEPOSITION EXCERPT

## BIAS AND BELIEVABILITY – MUTUALLY EXCLUSIVE

**Q:** You testified that by observing the child and foster parents you determined that there was attachment and bonding, correct?

**A:** Yes.



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# DEPOSITION EXCERPT

## BIAS AND BELIEVABILITY – MUTUALLY EXCLUSIVE

**Q:** So why didn't you view the tapes (of the parent and child) to help you gauge to some extent the level of attachment, bonding or comfort between the child and father?

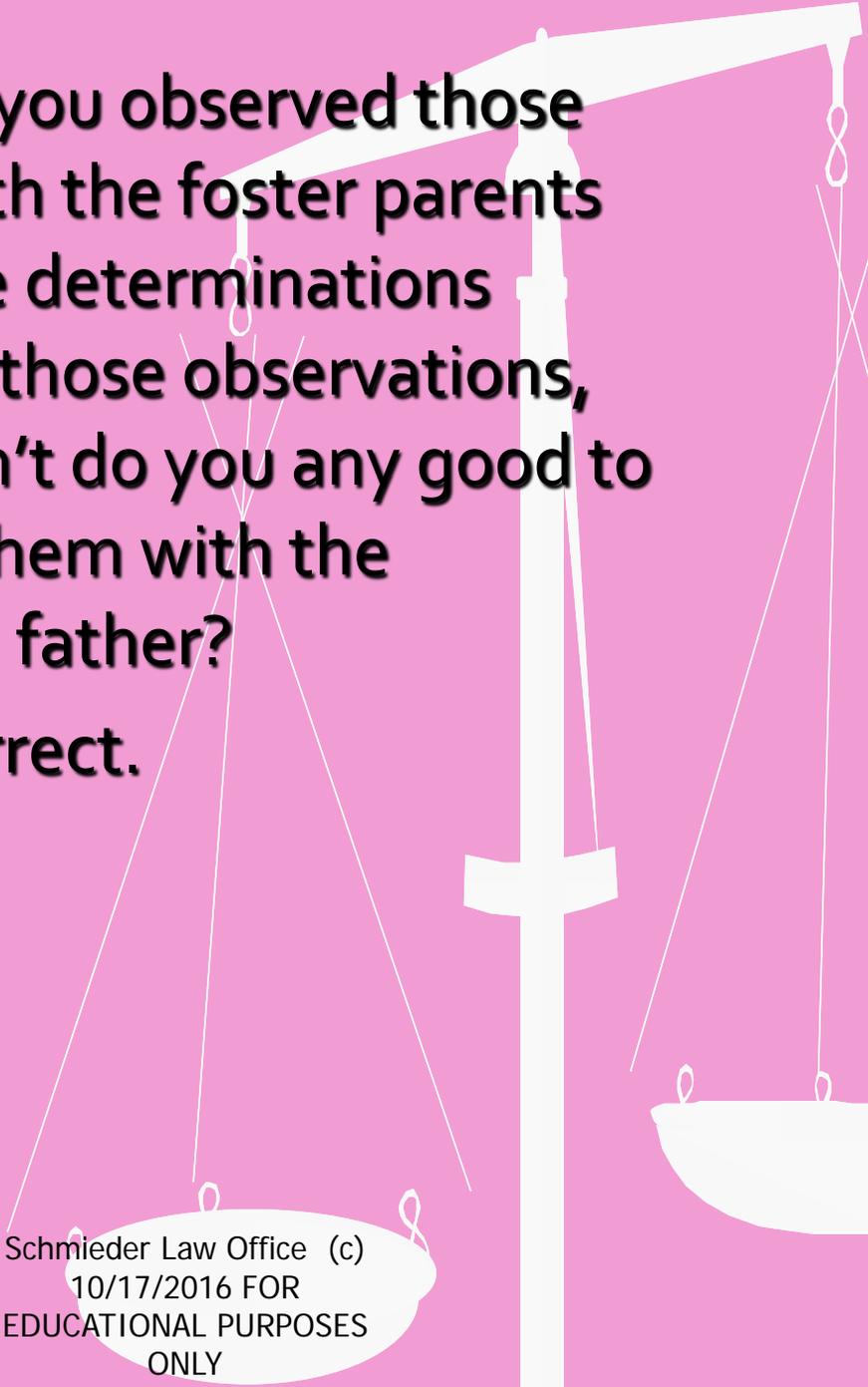
**A:** Because bonding is a lot more complicated than that.

# DEPOSITION EXCERPT

## BIAS AND BELIEVABILITY – MUTUALLY EXCLUSIVE

**Q:** So you observed those things with the foster parents and made determinations based on those observations, but it won't do you any good to observe them with the biological father?

**A:** Correct.



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# DEPOSITION EXCERPT

## BIAS AND BELIEVABILITY – MUTUALLY EXCLUSIVE

**Q:** You have diagnosed her with encopresis and enuresis? Correct?

**A:** Yes.

**Q:** This is based on the f/p telling your that the child has wetting and soiling accidents near the time of visits, correct?

**A:** Yes

# DEPOSITION EXCERPT

## BIAS AND BELIEVABILITY – MUTUALLY EXCLUSIVE

**Q:** When you took the history for this child, did you ask about her toilet training?

**A:** No.

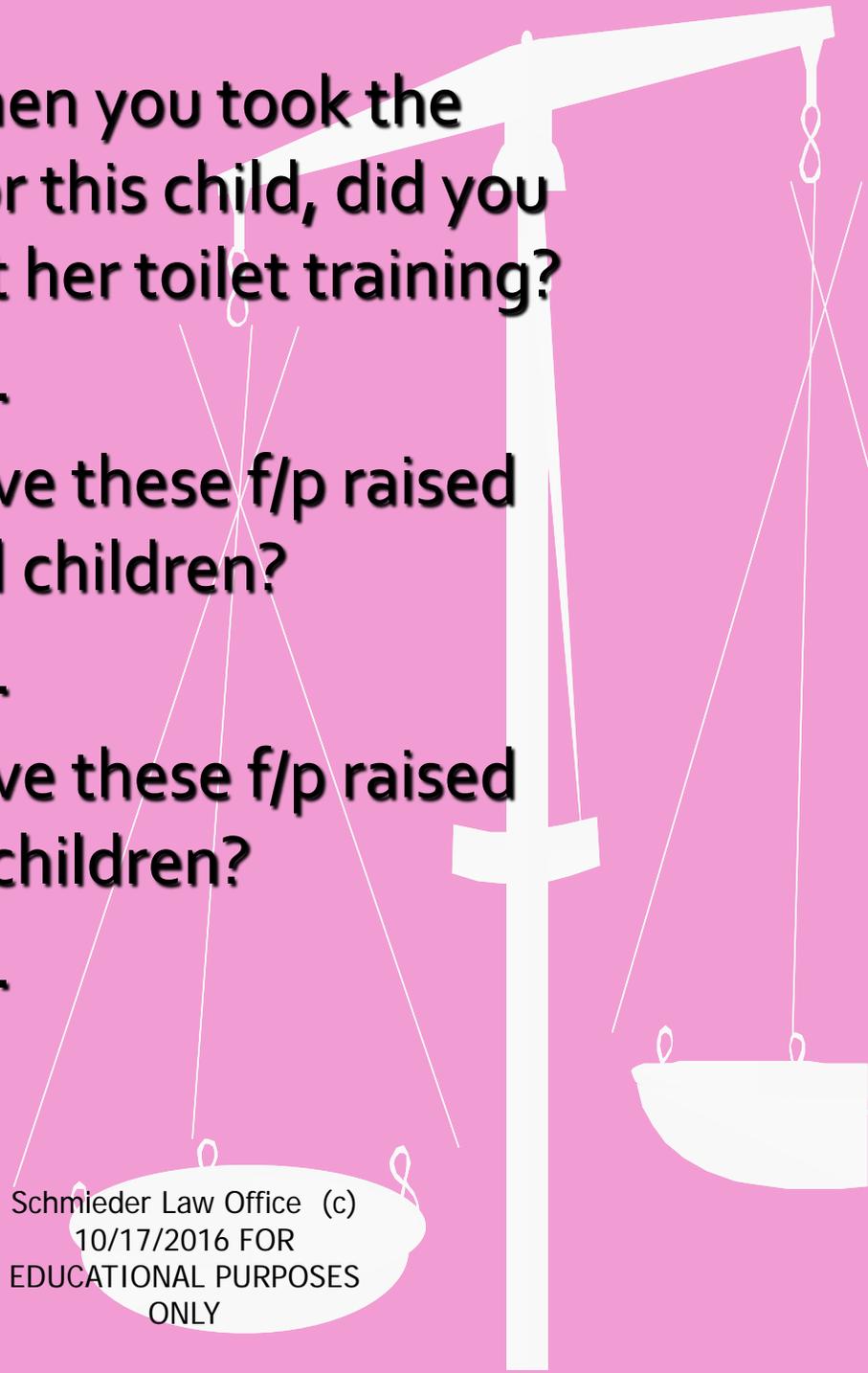
**Q:** Have these f/p raised biological children?

**A:** No.

**Q:** Have these f/p raised adopted children?

**A:** No.

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# DEPOSITION EXCERPT

## BIAS AND BELIEVABILITY – MUTUALLY EXCLUSIVE

**Q:** You are dealing with a pair of f/p in their fifties with no child rearing experience with a first time foster child that they recently potty trained, correct?

**A:** Correct



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# DEPOSITION EXCERPT

## BIAS AND BELIEVABILITY – MUTUALLY EXCLUSIVE

**Q:** Is it possible the wetting and constipation that so concerns the f/p and that you have diagnosed as encopresis and enuresis may only be potty training issues?

**A:** (No answer)

**Q:** That is possible, isn't it?

**A:** Possible, but I don't know how you are asking the question.

# DEPOSITION EXCERPT

## BIAS AND BELIEVABILITY – MUTUALLY EXCLUSIVE

**Q:** You don't know if these accidents happen while the child is playing, correct?

**A:** I know they happen before and after visits.

**Q:** Two days before, two days after and the day of the visit, right?

**A:** Right

# DEPOSITION EXCERPT

## BIAS AND BELIEVABILITY – MUTUALLY EXCLUSIVE

**Q:** Do you know when the child was potty trained?

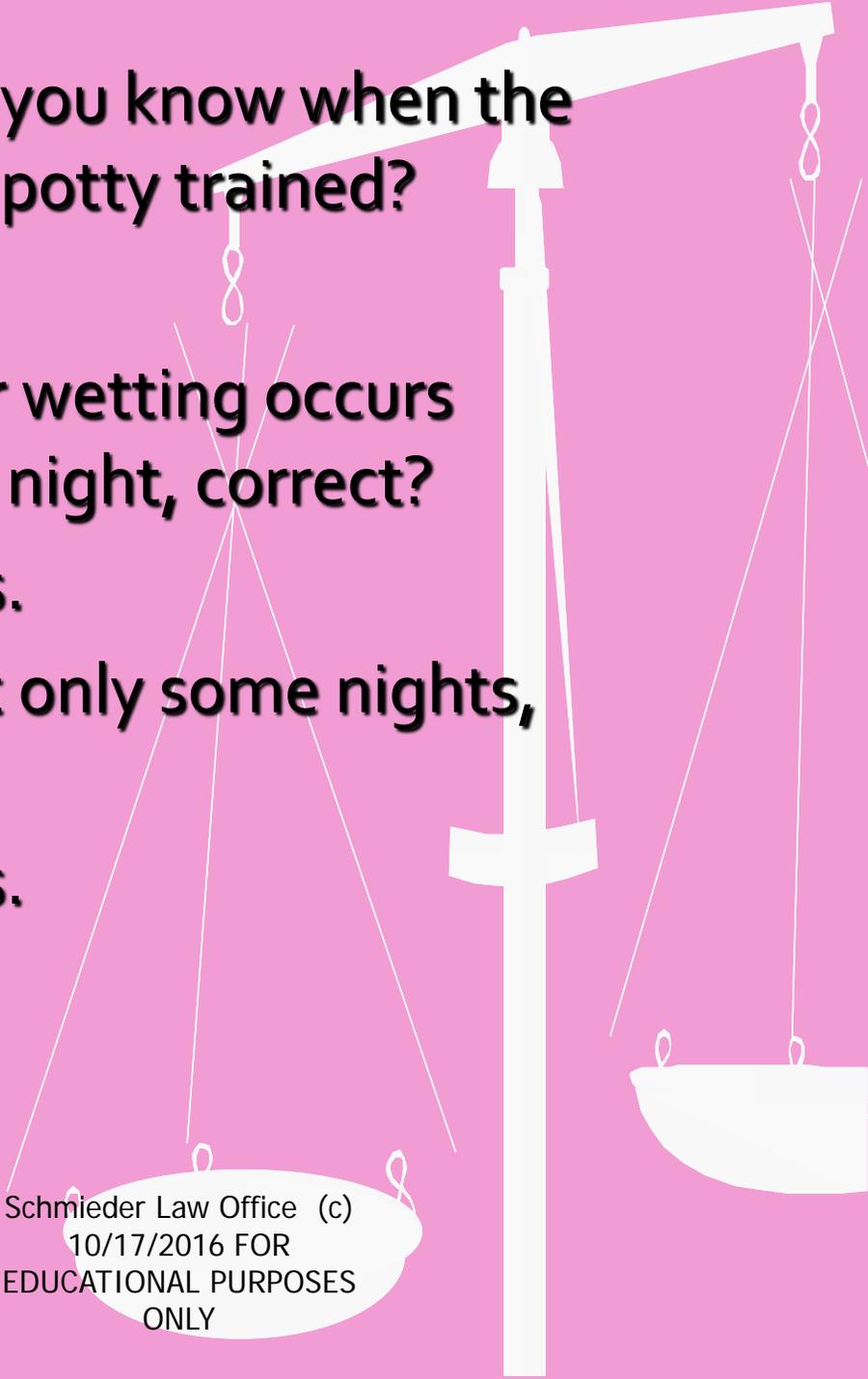
**A:** No

**Q:** Her wetting occurs mostly at night, correct?

**A:** Yes.

**Q:** But only some nights, correct?

**A:** Yes.



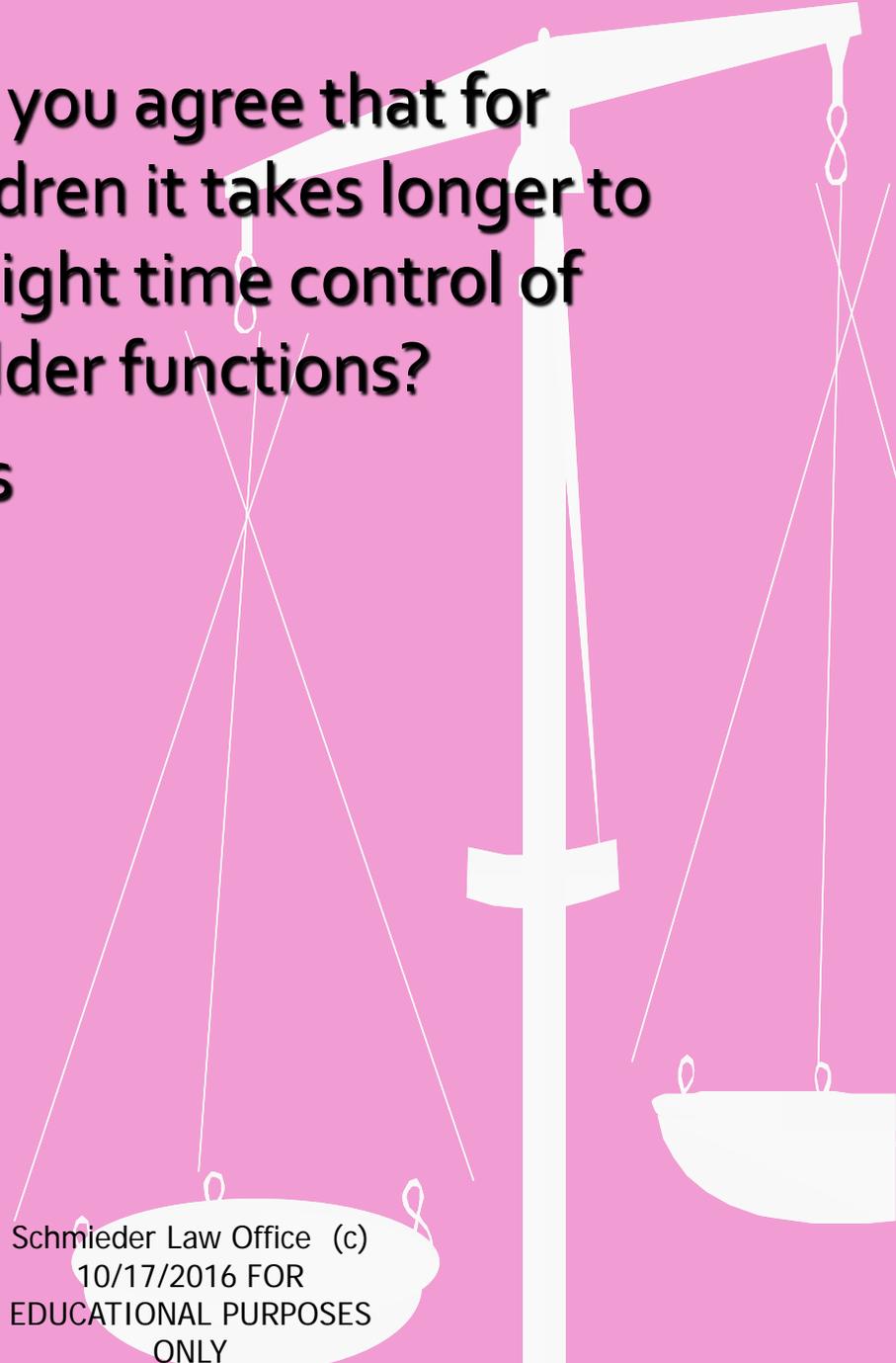
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# DEPOSITION EXCERPT

## BIAS AND BELIEVABILITY – MUTUALLY EXCLUSIVE

**Q:** Do you agree that for most children it takes longer to achieve night time control of their bladder functions?

**A:** Yes



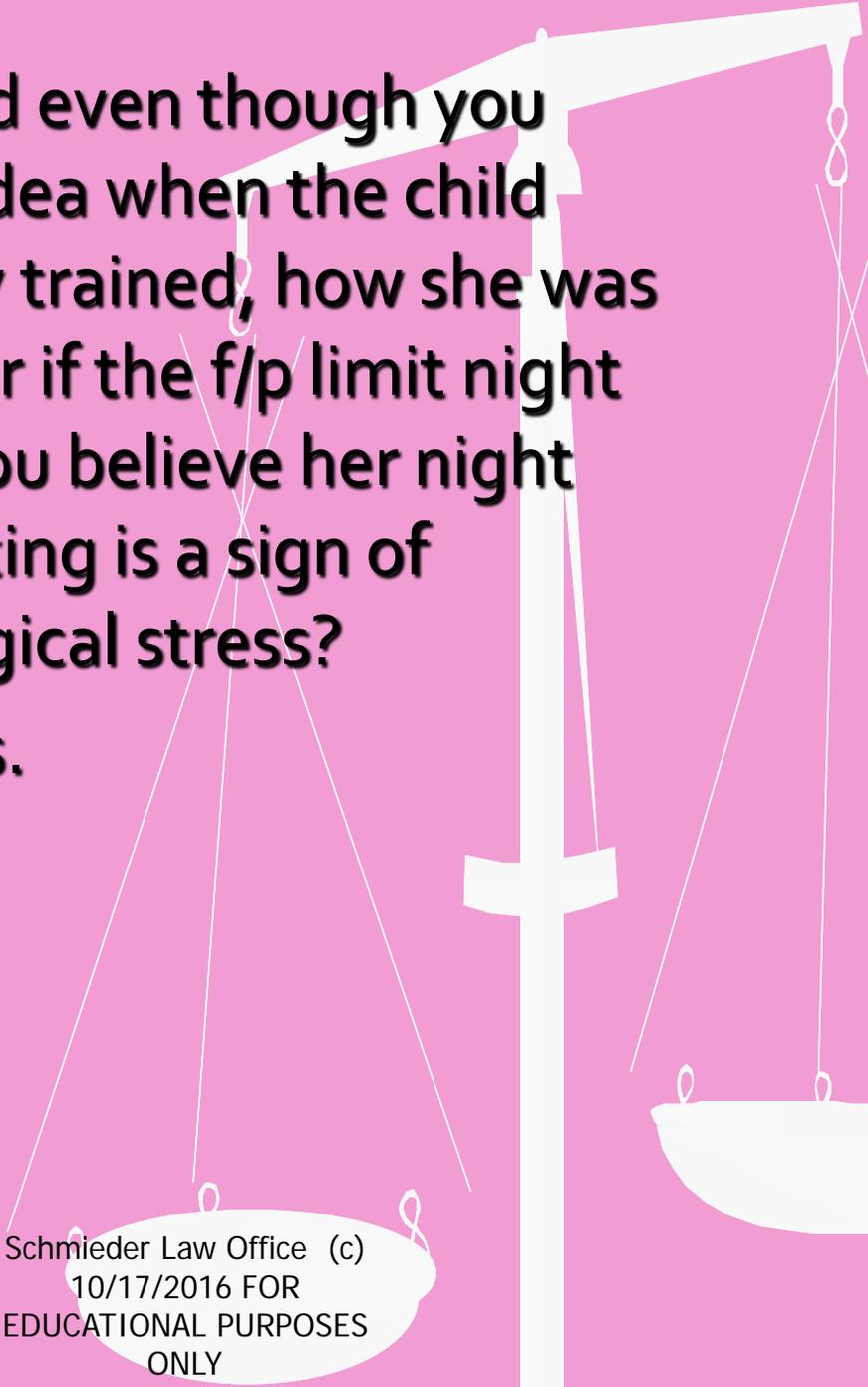
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# DEPOSITION EXCERPT

## BIAS AND BELIEVABILITY – MUTUALLY EXCLUSIVE

**Q:** And even though you have no idea when the child was potty trained, how she was trained, or if the f/p limit night liquids, you believe her night time wetting is a sign of psychological stress?

**A:** Yes.



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# DEPOSITION BOXING IN THE SOCIAL WORKER

- **Background – case was post plea pre disposition when this worker was assigned, the father was not in custody but was later in custody. The father has consistently requested paternal relatives be investigated as possible caregiver. The father resides out of state, is on federal probation, cannot travel, and has little financial resources**

# DEPOSITION BOXING IN THE SOCIAL WORKER

- Q – Did you inquire of the father if he had any available relatives for placement of the child.
- A – Yes
- Q – Specifically what did you ask him?
- A – I don't recall but I remember him telling me about a brother he had that could take placement

# DEPOSITION BOXING IN THE SOCIAL WORKER

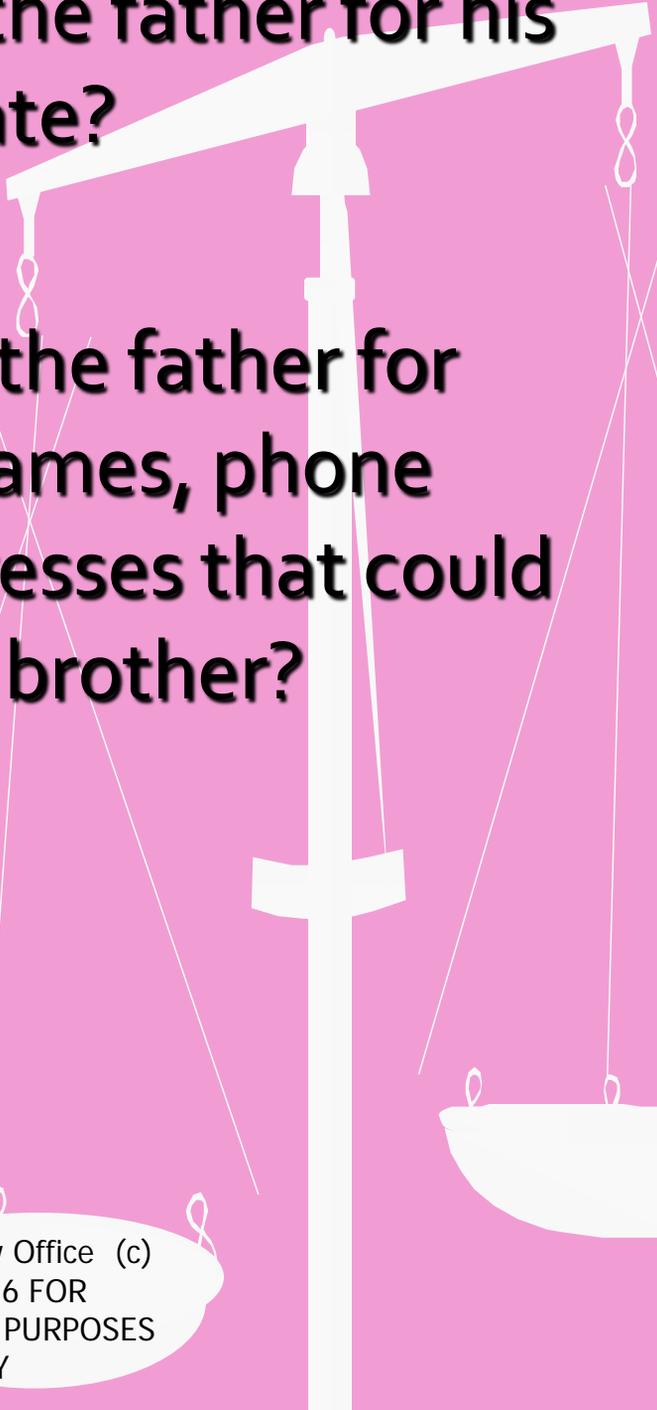
- Q – When he told you that did you gain from him the necessary information to do a relative investigation?
- A – He was going to contact me with the information for his brother. He didn't have it.

# DEPOSITION BOXING IN THE SOCIAL WORKER

- Q – He didn't know his brother's name?
- A – He didn't know where, like, his phone number or address or anything like that...
- Q – But he gave you...
- A – He knew his name. I don't remember his name.

# DEPOSITION BOXING IN THE SOCIAL WORKER

- Q – Did you ask the father for his brother's birthdate?
- A – I don't recall.
- Q – Did you ask the father for other relatives names, phone numbers or addresses that could help you find his brother?
- A – I don't recall.



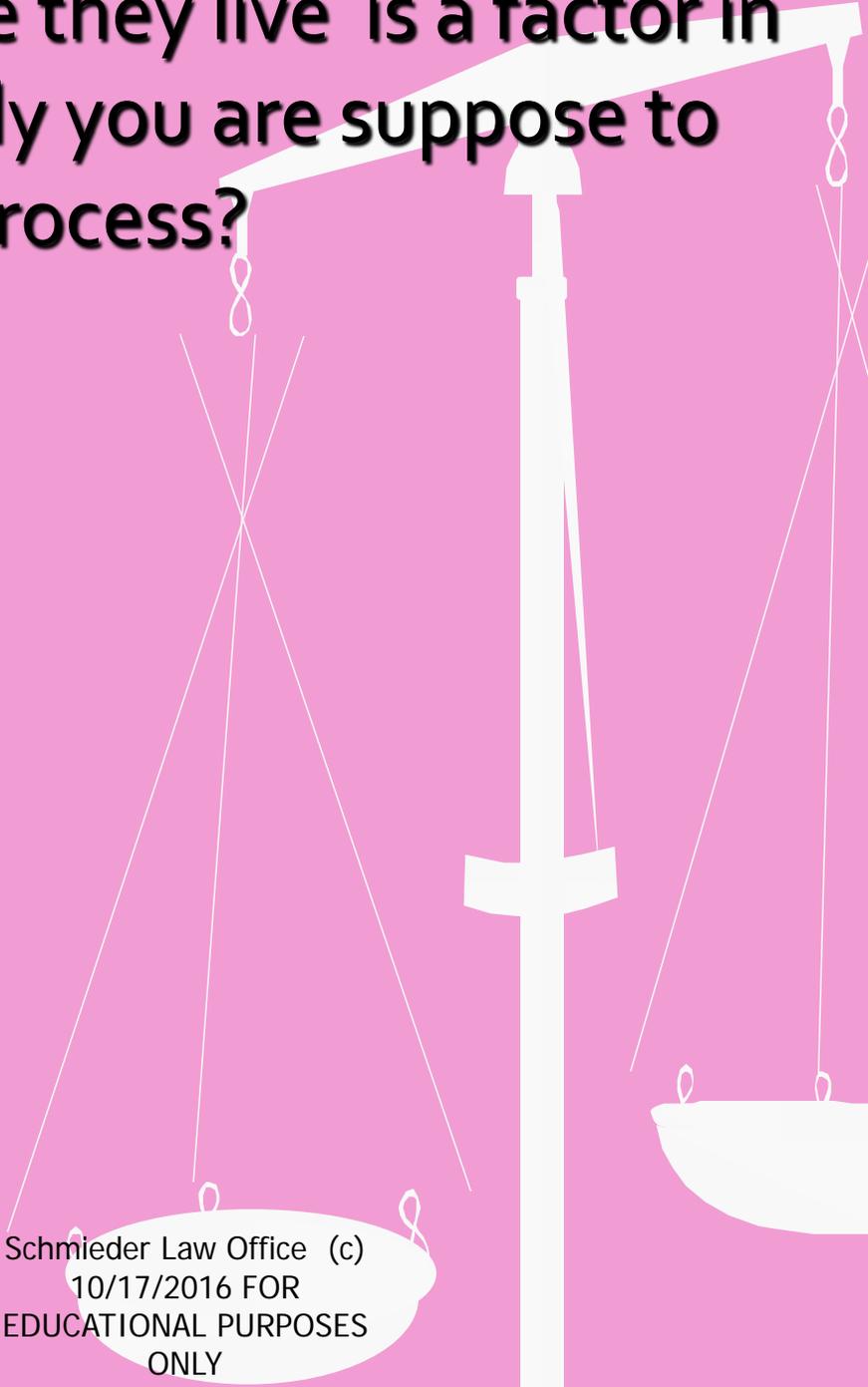
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# DEPOSITION BOXING IN THE SOCIAL WORKER

- Q – Did the father give you the information?
- A – He did contact me at one time and gave a phone number.
- Q – How quickly are you supposed to complete the responsibility of investigating a potential relative placement once you receive the initial information?
- A – It depends on where they live. There is a lot of circumstances that go with that.

# DEPOSITION BOXING IN THE SOCIAL WORKER

- Q – Where they live is a factor in how quickly you are suppose to start the process?
- A – Yes



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# DEPOSITION BOXING IN THE SOCIAL WORKER

- Q – After learning of a relative’s interest you decided to not formally pursue their eligibility for relative placement based upon some comments you heard about their past criminal history, correct?
- A – Yes
- Q – Did you consult with your supervisor prior to making that decision.
- A – I don’t remember

# DEPOSITION BOXING IN THE SOCIAL WORKER

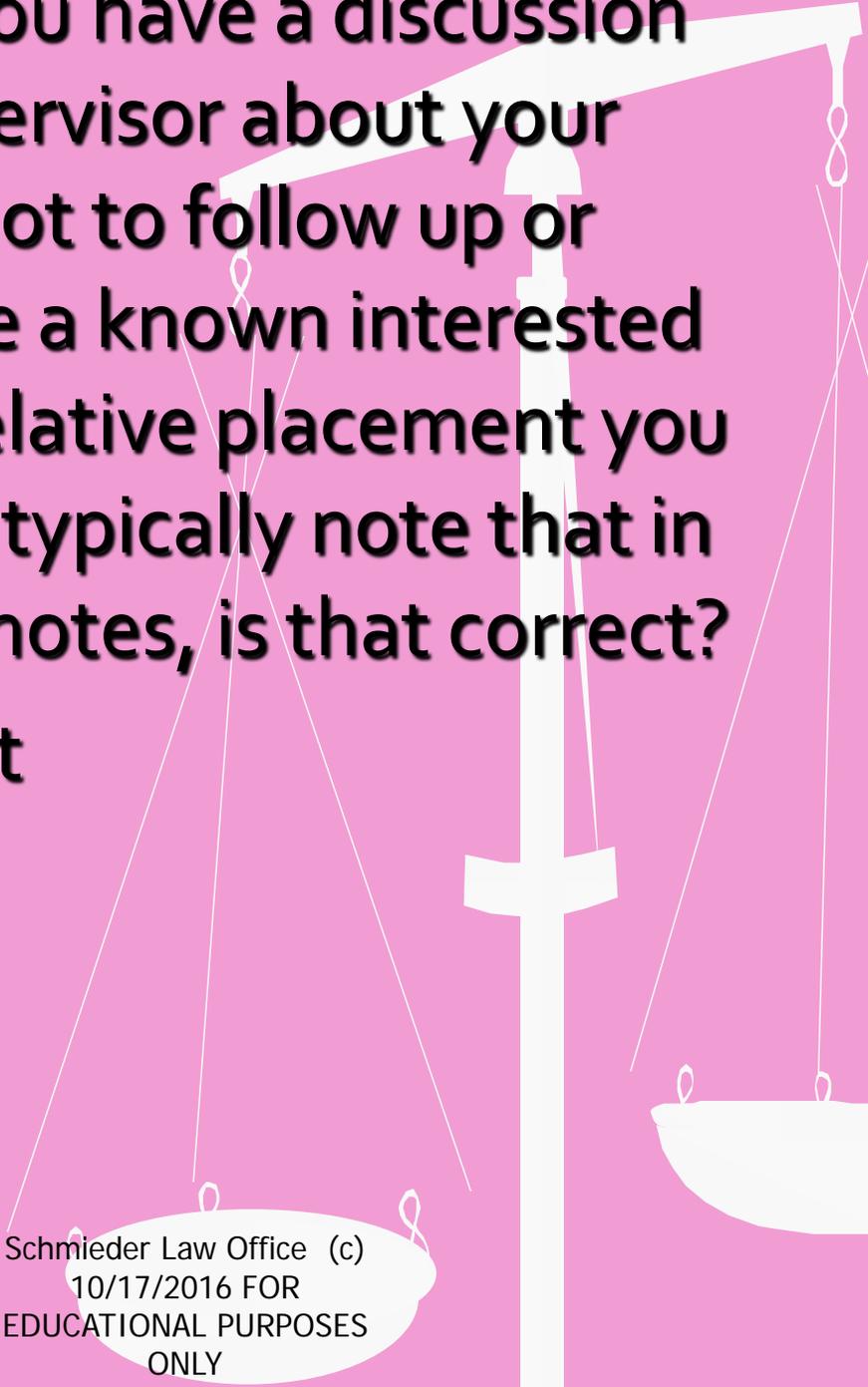
- Q – Would it be your typical practice to note that in your case notes if you had such a discussion with your supervisor?
- A – No, I wouldn't make a case not separately.



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# DEPOSITION BOXING IN THE SOCIAL WORKER

- Q – So if you have a discussion with a supervisor about your decision not to follow up or investigate a known interested possible relative placement you would not typically note that in your case notes, is that correct?
- A – Correct



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# DEPOSITION BOXING IN THE SOCIAL WORKER

- Q – Why not?
- A – I don't know.
- Q – What are the purpose of your case notes?
- A – To document our working on the case.



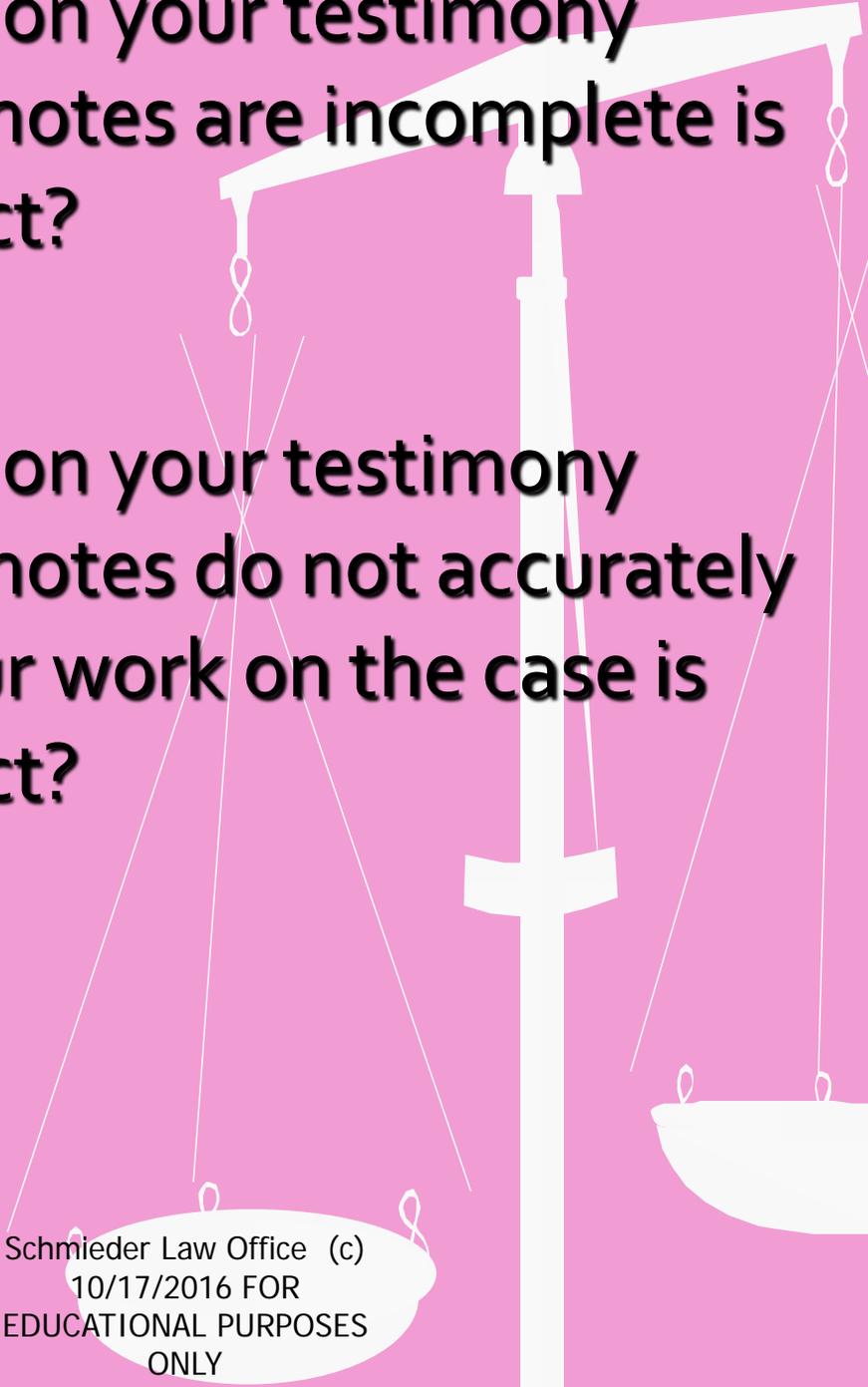
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# DEPOSITION BOXING IN THE SOCIAL WORKER

- Q – And would you agree that a decision made by you not to follow up about an interested possible relative placement is an act of working on the case?
- A – Yes
- Q – And in hindsight don't you think that information of that nature should be documented in your case notes?
- A - Yes

# DEPOSITION BOXING IN THE SOCIAL WORKER

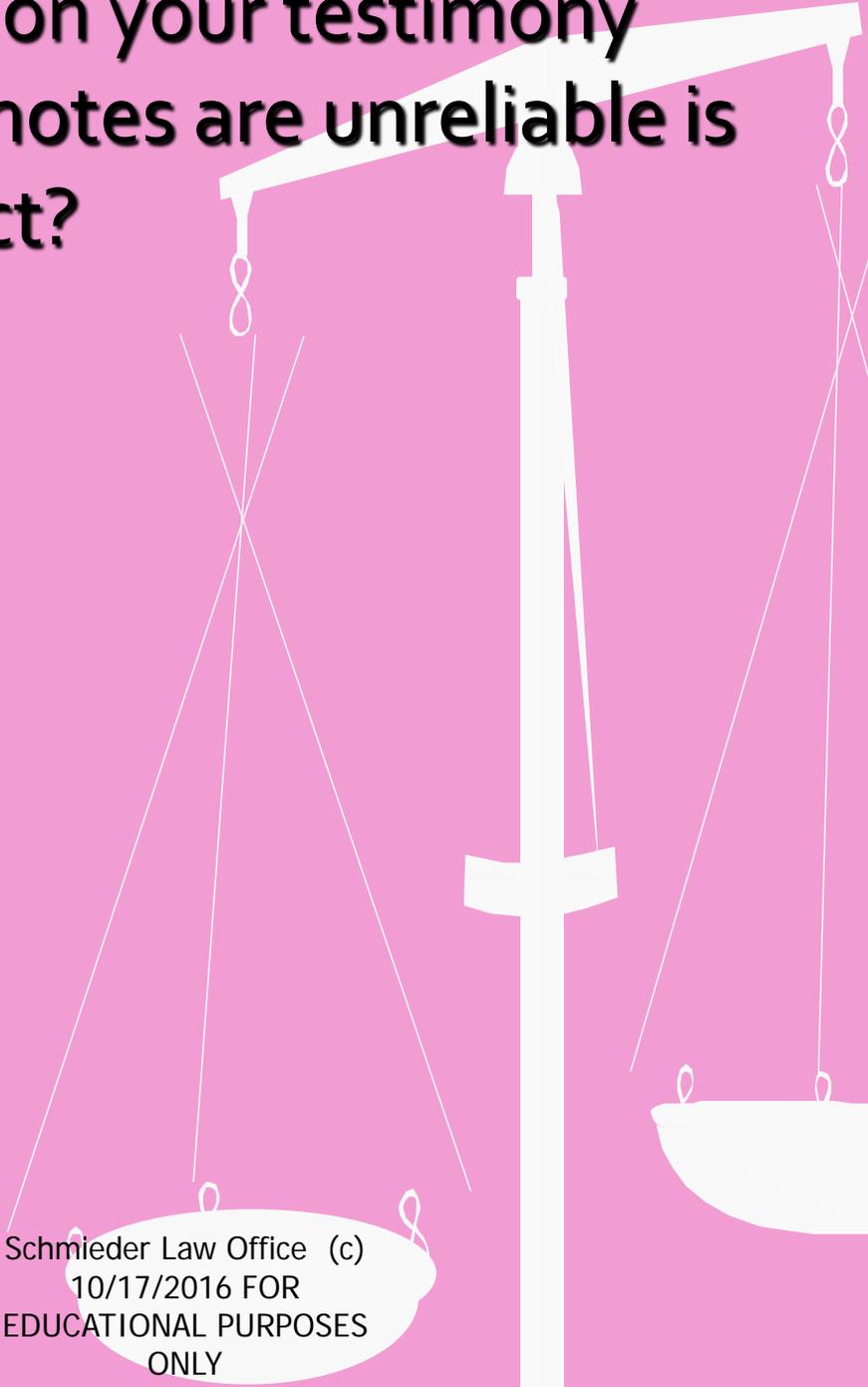
- Q – Based on your testimony your case notes are incomplete is that correct?
- A – Yes
- Q – Based on your testimony your case notes do not accurately reflect your work on the case is that correct?
- A – Yes



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# DEPOSITION BOXING IN THE SOCIAL WORKER

- Q – Based on your testimony your case notes are unreliable is that correct?
- A – Yes



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# DEPOSITION BOXING IN THE SOCIAL WORKER

History grandmother receiving day long visits but Department will not consider her for relative placement

Q- Has she every threatened you?

A- She has told me that I am unprofessional and that she going to report it and she is going do this and she is going to do that. It has not been I'm going to cut her head off or anything like that.

# DEPOSITION BOXING IN THE SOCIAL WORKER

- **Q – So she had an opinion of you that you acted unprofessionally, indicated that she was going to report that, which wouldn't you agree, would be the proper course of action if you had been unprofessional?**
- **A – Absolutely, Absolutely,**

# DEPOSITION BOXING IN THE SOCIAL WORKER

- Q – So it really wasn't a threat then was it?
- A – No.
- Q – Have you ever felt in danger with her
- A – No.



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# It's an unfair fight...

- The protection of a parent's interests in termination of parental rights proceedings is particularly important in light of the vast disparity in an involuntary termination case between the ability of the state to prosecute and the ability of the parent to defend.... the State's ability to assemble its case almost inevitably dwarfs the parents' ability to mount a defense. No predetermined limits restrict the sums an agency may spend in prosecuting a given termination proceeding. The State's attorney usually will be expert on the issues contested and the procedures employed at the fact-finding hearing, and enjoys full access to all public records concerning the family. The State may call on experts in family relations, psychology, and medicine to bolster its case. Furthermore, the primary witnesses at the hearing will be the agency's own professional caseworkers whom the State has empowered both to investigate the family situation and to testify against the parents. Indeed, because the child is already in agency custody, the State even has the power to shape the historical events that form the basis for termination.
- ***Brown County v. Shannon R.***, 2005 WI 160, 286 Wis. 2d 278, 62, 706 N.W.2d 269.

# It's okay to be a fanatical defense attorney

- "Extremism in the defense of liberty is no vice; moderation in the pursuit of justice is no virtue."  
-- Barry Goldwater (actually written by Karl Hess)
- Love your country, but never trust its government.  
-- Robert A. Heinlein.
- "I hold it, that a little rebellion, now and then, is a good thing, and as necessary in the political world as storms in the physical."  
-- Thomas Jefferson, Letter to James Madison, January 30, 1787

# How to Play by the Rules

(almost everything you were afraid to know about  
the Civil Rules of Procedure 😊)

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