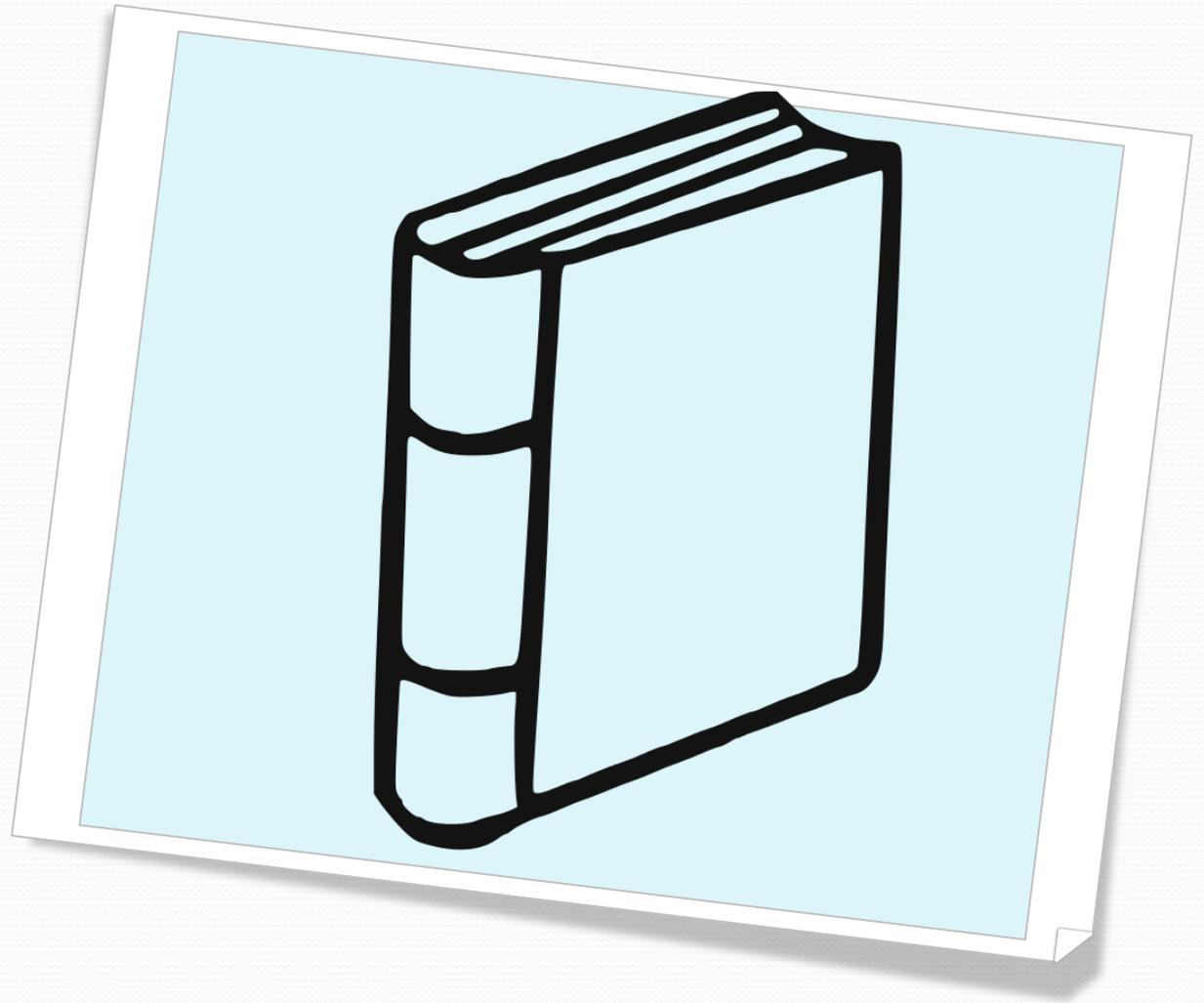


# Default

What do I do if my  
client is MIA?



**Statutory  
Authority:  
Wis. Stat.  
48.23 (2)**





# The Important Parts:

- (1) a parent 18 years of age or over
- (2) is presumed to have waived his or her right to counsel and to appear by counsel
  - (1) 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,
  - (2) and the court finds that the parent's conduct in failing to appear in person was egregious
  - (3) and without clear and justifiable excuse.
- (3) **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.***
- (4) 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.



# Hold Up Judge, But First YOU have to:

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]

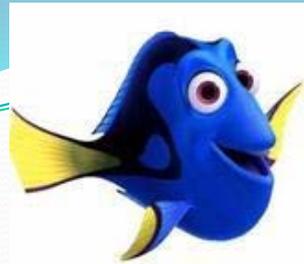
# When Default Can Be a Sanction

- ✘ 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

# 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 (Just keep Swimming)

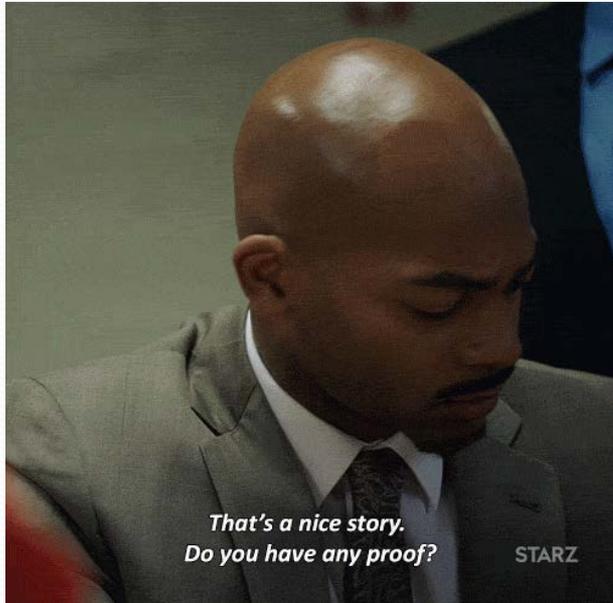
- Do not disclose privileged information to the court if your client isn't there
- If the court does not remove, you **MUST** keep fighting (even with an empty chair next to you)
- If the court attempts to remove you as counsel, argue to stay on
  - Remind court of the serious consequences at state in 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: The Return of the Client



- 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”

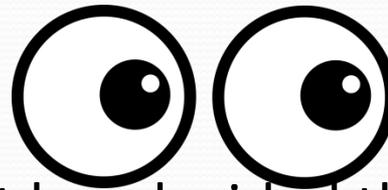


- Even if your client fails to appear, the petitioner must nonetheless provide evidence to support one or more of the grounds pled by clear and convincing evidence.
- Wis. Stat. § 48.422 (3) requires a court to hear testimony in support of the allegations in the petition to warrant a finding that grounds 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  
Here

- 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 waives 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.

# Questions : Check the Website

