



**PRIVATE
FILED TPRS**

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**WAIT, WHAT? THERE'S NO SOCIAL
WORKER?**



THE Grunion

Antagonist Social Worker from
Mr. Peabody and Sherman

(If you haven't seen it, totally worth watching)

YOUR NEMESIS



- Welcome to the world of family law. Most of the time, the petitioner will be the other parent, or a lawyer for the other parent.
- Many of the lawyers typically practice family law. They will likely not be familiar with the criminal standards—PROBABLE CAUSE being a big one. Remember that PROBABLE CAUSE for a petition is the same as for a criminal complaint—conclusions are not enough:

A petition for termination of parental rights must set forth facts and circumstances to establish probable cause that the grounds alleged therein are true. The same level of probable cause required for a criminal complaint is required in a petition seeking to terminate a parent's rights regarding his child. In Courtney E., 184 Wis.2d 592, 601, 516 N.W.2d 422 (1994); In Interest of L.A.T., 167 Wis.2d 276, 283, 481 N.W.2d 493 (App. 1992). Conclusions are insufficient to form a basis for a finding of probable cause. A petition is not sufficient where it merely restates the statutory grounds for termination. More facts are required to establish a basis for alleged grounds for termination of parental rights.



DON'T BE LURED INTO LAZINESS

- File a discovery demand—and make sure to ask for the kitchen sink, since you never know what's out there. I still request DHS/Bureau records, in case they EVER existed.
- Discovery will likely be minimal—that doesn't mean you don't have issues to argue.
- Depositions of the other parents are huge in these cases—try to get to the heart of why they are trying to terminate your parent. Remember that lots of people have bad, nasty divorces or break-ups. Being a bad boyfriend does not mean you're a bad dad.
- Know the grounds—petitioners can get creative in these.
- Remember money is an issue in these—having a lawyer file a TPR for you is not free, and jury trials are expensive. As are motion hearings, etc.



COMMON GROUND(S) AND THINGS TO LOOK FOR



- Abandonment: 48.415 (1)
 - Did the other parent make it difficult or impossible for the respondent to contact the child?
 - Was there a court-order (aka a restraining order, etc.) that said your client couldn't contact the other party?
- Failure to Assume: 48.415 (6)
 - Did your parent ever have a relationship with the kid?
 - Again, did the other parent make it difficult or impossible for the respondent to be involved?
- Continual Denial of Periods of Physical Placement or Visitation—one year 48.415 (4)
 - There is a constitutional challenge that can be made if the court-order was in a family law case, and not a CHIPS case. Motion is on the web-site.
 - Get a copy of the court-order that prohibited the visitation. Try to attack that order (either in the family court or CHIPS court)—I've seen many orders are have no conditions for reinstatement or at most, very vague conditions.
- Child conceived as a result of sexual assault: 48.415(9)
 - Only recently seen this. There was no criminal case.

YOU CAN DO IT—WIL'S STORY

Early in 2016 a lawyer who had taken the TPR training in October, 2015, and who had learned the basics about “regular” TPRs, that is, a TPR involving the State or County trying to terminate a parent’s rights over on her child, suddenly found himself in the world of private TPRs. A world he was only vaguely aware of.

That lawyer was me, and for someone who has been practicing law since 1983, 29 years with the SPD, it was scary and disorienting moment. My last few trials had been sexual assault cases, but when I took this private TPR case I was as lost as a first year law student learning the Rule against Perpetuities. Well, maybe not that lost, but still ... although I don’t remember the rule.

A world of civil practice involving private attorneys whom you don’t know and with whom you don’t have a friendly, or even unfriendly, relationship.

A world of a quick 40 day deadline (not exactly) and the worry about not being able to prepare adequately.

(Re)-learning chapter 804 Discovery: Interrogatories, Request for Production of Documents, Depositions, Request for Admissions.

Your usual Request for Discovery is of no value here- there is no State, no D.A. or HSD social worker to ask for reports which do not exist.

HELP IS HERE

Don't despair too long- panic for ten minutes and then try to get your bearings.

Contact people like Amanda, and Diane, and Milton, and the many others in the agency who are willing and able to help you. They are just an email message away.

Read the TPR statutes- ss. 48.40 to 48.437, which can be confusing and unclear when you first read it- so read them again.

And find all the hidden statutes that relate to TPRs: like 48.23(2)(b) (on when your client doesn't appear).

Read the TPR Jury Instructions for the grounds you are dealing with and for TPR procedures.

Be ready to learn something new and to make mistakes.