

Why Does that Parent's Attorney Do that?

October 17, 2009
Washington State CASA's 17th Annual Conference
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Workshop Overview

- *Understanding our Unique Roles and Responsibilities*
 - Washington State Office of Public Defense
 - Parent's Attorney
 - OPD Parents Representation Program Social Worker
 - DCFS Social Worker
 - Assistant Attorney General
 - CASA/GAL
 - Child's Attorney
 - Caregiver- Foster Parent/Relative/Kin

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Workshop Overview

- *Actions by the Parent's Attorney that May Appear Counter Productive or Not in the Child's Best Interest*
 - Contested Shelter Care Hearings
 - Refusing Services at Shelter Care
 - Contested Dependency Fact Finding
 - Use of Independent Experts
 - Restrict Communication with the Parent
 - Contested Termination of Parental Rights
 - Filing Appeals

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Washington State Office of Public Defense

- Joanne Moore, Director
- Sophia Byrd McSherry, Deputy Director
- Independent Judicial Branch Agency
 - **OPD Parents Representation Program**
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Implementation of the Right to Counsel

- Washington State Office of Public Defense
 - Duties: implement the right counsel and ensure effective and efficient delivery of indigent defense services funded by the state of Washington.
 - Trial court criminal indigent defense
 - Appellate indigent defense
 - Representation of indigent parents in dependency and termination cases
- County Administered Public Defense Services for Indigent Parents

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The Right to Counsel in Dependency and TPR Cases

- Parents have a right to counsel at all stages of a dependency case
 - Shelter Care
 - Dependency
 - Termination of Parental Rights
 - Appeals
- Indigent parents have a right to an attorney at public expense

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Role of the Parent's Attorney

- Specific Duties to Client:
 - **Client Directed Representation**- an attorney must abide by a client's decisions concerning the objectives of representation
 - **Confidentiality**- an attorney shall not reveal information relating to the representation of a client unless the client gives informed consent
 - **Client with Diminished Capacity**- as far as reasonably possible, an attorney must maintain a normal client-lawyer relationship with the client

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Who Are You (Ooh-Ooh, Ooh-Ooh), from the Parents Attorney's Perspective?

- Department Social Worker
 - Who is their client?
 - Child?
 - Parents?
 - Whole Family?
 - What's their job once dependency has been filed?
 - Protect children
 - Work with the family towards reunification when required by law
 - Seek permanency

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Department Social Worker cont.

- What parents' attorneys should expect of SWs:
 - SWs should do their job well
 - SWs should recognize that they have the awesome power of the state behind them
 - SWs should recognize that it is the attorney's job to test that power
 - SW's should recognize the parent's attorney's obligation to represent the client's stated interest

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Who Are You?

- Assistant Attorney General/Prosecuting Attorney
 - Who is their client?
 - Department Social Worker personally?
 - Department Social Worker as an agent for the State?
 - Job?
 - Represents client in court and advises client on law
 - Counselor at law function as well (RPC 2.1)
 - What parent's attorneys should expect from them
 - To represent their client as required by the RPCs
 - To be a problem solver if the department is not following the law
 - To recognize differences in our roles because of who we represent (i.e. "red-faced argument")

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Who Are You?

- CASA/GAL
- Who is the client?
 - Child?
 - Court(as an officer of)?
 - Best interest of the child?
- What is their job?
 - GALR 2, 3 and RCW 13.34.105 spells out duties
 - Independent investigation, assessment and recommendations- best interest of the child
 - Monitor compliance of court orders (parents and dept.)

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CASA/GAL Cont.

- What parents attorneys should expect from CASA/GALs
 - Independence
 - Communication
 - Vigorous advocacy for their recommendations
 - CASA/GAL should recognize other parties will do the same when they disagree

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Who Are You?

- Child's Attorney
- Client?
 - Child
 - Client directed advocacy v. "best interest of the child"
- Job
 - Represent client under RPCs
 - Advocates for services for the child

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Who are you?

- Foster parents/Kinship placements
- Job
 - Caretaker for the child
 - Permanent placement option
- What parent's attorneys expect:
 - Reliable, objective reports
 - A member of the "case team"
 - Greater interaction between FP's and parents (Wishful thinking?)

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Bottom Line

- The child welfare system works best when we all do our jobs well
 - When there is disagreement, judges make better decisions when all sides are well represented
 - When there is agreement, we can be confident in what was agreed upon when it was well tested
 - System moves faster- Permanency

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Presenters' Disclaimer

- Slide "answers" and discussion represent the speaker's interpretation of the WA State Rules of Professional Conduct (RPCs)
- Attorneys often struggle with what the "ethical" thing do in a given situation based on the RPCs
- Attorneys make their own independent judgment and may interpret some rules differently

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Why does the attorney...ignore the best interest of the child?

The attorney's job is to pursue the goal established by the parent.

- Different opinion on what is in the child's best interest
- Remember confidentiality: an attorney shall not reveal information relating to the representation of a client unless the client gives informed consent.
- Common situations where this may arise

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Why does the attorney... contest Shelter Care when there is "no chance" the child will be returned home?

- Parent's right to a contested hearing and address issues such as:
 - Relative placement or other suitable person
 - Reasonable efforts finding
 - Visitation issues
- The attorney may believe the state has not met their burden to remove the child:
 - The parent is fit
 - Issues can be addressed while keeping the child in the home

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Why does the attorney... oppose services or evaluations at shelter care?

- The parent doesn't want to do the service
- The parent may want to contest the dependency
- The service may not be necessary:
 - The attorney needs additional time to investigate
 - Discovery, discovery, discovery!
 - State has not met its burden to show that a service or evaluation is necessary
 - The attorney may view the evaluation (or service) as a "fishing expedition"

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Why does the attorney...contest the dependency fact finding?

- The parent has a right to contest
- The parent is fit
- Parent contests statutory basis for dependency
- Parties cannot agree on findings and "facts matter"
- Parent engagement remains key! Attorney as advisor and advocate.
- But what if the parent is absent?
 - Appearance through the attorney
 - Effective Representation

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Why does the attorney...contest a TPR?

- Parent has a right to contest
- Parent is now fit
- TPR is not in the child's best interest
- Parent cannot agree to relinquish
- Attorney as advisor and advocate

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Why does the attorney...appeal a TPR?

- Duty to file an appeal if directed to do so by their client
- 'Death penalty' of civil litigation. Every avenue has to be explored.
- Some TPR decisions are overturned.
- Follow-up issue: "Yes, but appeals take so long."
 - Delays harm all parties
 - Dependency and TPR appeals are accelerated reviews
 - Recent changes to the Rules of Appellate Procedure intended to speed up process

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Why does the attorney...appeal a dependency review hearing order?

- The parent wants an issue appealed
- If the issue (such as visitation) is not appealed now, it may not be appealable later

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Why does the attorney...discourage clients from entering drug court?

- Clients stated goals incompatible with drug court
- Clients disposition incompatible with drug court
- Jail time not an appropriate sanction
- Parents may have a better chance at reunification outside of drug court
- Reverse issue: Contested drug court entry. Equal Protection Argument?

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Why does the attorney... use independent experts or evaluations?

- First evaluation was not mutually agreed upon
- Parent doesn't trust the department's expert
- Attorney wants an objective first or second opinion on a case
 - Attorney can keep the evaluation or expert confidential
 - The parent may be more open to a diagnosis or recommended services of their own expert
 - Evaluations have serious consequences
 - Parent may be facing the 'civil death penalty'
 - If I was diagnosed with a life threatening illness, I would want a second opinion

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Why does the attorney...ignore the financial realities of DSHS?

- Vast majority of parents qualify as indigent
- Parent has been found to need those services to get the child back
- DSHS duty to make reasonable efforts
- State has the burden to establish that they don't have funding
- Funded services may speed reunification/ permanency
- Findings of availability of services relevant to termination proceeding
- DSHS contracts may limit available resources

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Why does the attorney...advise the parent not to talk to me or discuss a particular issue with me?

- Parents are entitled to communicate through their attorney
 - Potential criminal charges
 - Possible contested fact finding
 - Sometimes parents are angry, volatile, naïve, etc.
 - There are conflicting reports of what is being said
- Visitation is for visiting
- Side question: why does the attorney get angry when social worker goes over a relinquishment with the parent?

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Why does the attorney... personally attack me in court?

- RPCs prohibit personal attacks on you. If you are personally attacked, you, your attorney or the judicial officer should address this issue.
- Personal attack or conscientious and ardent advocacy?
- Attorney's duty to attempt to achieve parent's stated goals can vary from case to case or even within a case
- Possible responses: talk to the attorney, limit contact, sanctions

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Parents Representation Program
Social Workers

The goal of a Parents Representation Program social worker is to fully utilize their unique interpersonal leverage in supporting and motivating parents to understand their case plans and engage in necessary services at the earliest point possible.

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Parents Representation Program
Social Workers

- Have the same minimum academic and professional qualifications as Children's Administration social workers;
- Are primarily contracted with the OPD and operate under the Parents Representation Program Social Worker Practice Standards;
- Are a limited resource for Parents Representation Program attorneys;
- Are a voluntary service for parents;

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Parents Representation Program Social Workers

- May be referred to work with a parent *only* by the assigned Parents Representation Program attorney;
- Parents Representation Program social worker role is designed to have as much face to face contact with parents as possible;
- Are considered mandated reporters;
- Are considered an agent of the assigned Parents Representation Program attorney;
- Have typical caseloads of 25-35 parents;
- May only work with one parent due to client conflict issues.

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Parents Representation Program Social Worker Role

- PRP social worker as parent support;
- PRP social worker as investigator;
- PRP social worker as parent advocate;
- PRP social worker as witness;
- PRP social worker as community child welfare participant.

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Opportunities to Collaborate in an “Adversarial System”

- Joint Trainings & Conferences
- CASA- OPD Memo of Understanding
- Complaint Resolution
- System Improvement Efforts
- Increased Focus on the Family
 - Including Parents in the Child Welfare Discussion

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