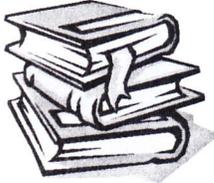


## ***UNIT SEVEN***

### ***TRIAL PREPARATION***



#### **1. Legal Training for CASA – Amy Atkinson**

#### **2. Trial Preparation**

**Preparation for Testifying**

**Assessment of Reasonable Efforts**

**Assessment of Gains & Losses**

**Sample Subject Areas You Should Be Prepared To Testify About**

# LEGAL TRAINING FOR CASA



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## CASA'S FAVORITE STATUTE

(Drum roll please)

Texas Family Code Section 107.002(e)  
(doesn't that sound exciting??!?)

Unless the guardian ad litem is an attorney who has been appointed in the dual role and subject to the Texas Rules of Evidence, the court SHALL ENSURE in a hearing OR TRIAL ON THE MERITS that a guardian ad litem has the opportunity to testify regarding, and is permitted to submit a report regarding, the guardian ad litem's recommendations relating to:

(1) the best interests of the child; AND

(Here's the best part!!!!)

(2) THE **BASES** FOR THE GUARDIAN AD LITEM'S RECOMMENDATIONS

## WITNESS CREDIBILITY

\*\*\*The strength of a case turns on the CREDIBILITY of the witnesses.\*\*\*

\*\*\*You must strive to be a CREDIBLE WITNESS.\*\*\*

### THREE CREDIBILITY RULES TO LIVE BY:

#### (1) ABANDON BIAS

–The best witnesses are those that appear to have no bias or pre-existing relationship with any of the parties. They are completely objective. This is what makes CASA Advocates such great witnesses—you are one of the only truly objective people involved in the CPS case.

--As a CASA worker, you may become frustrated, even angry, with parents who refuse to work their service plan OR with CPS who may not be doing what you believe needs to be done. DO NOT allow these feelings to be apparent in the courtroom. You must show that you have no negative personal feelings about the parents or about CPS. Your opinions should be based solely on facts.

–Defense attorneys will often try to show that the CASA worker does not like the parents or that the CASA advocate lives in a huge mansion in The Woodlands and has no patience for poor people with dirty houses.

–You can demonstrate objectivity by:

\* giving credit where credit is due (state what the parents (or CPS) *have* accomplished)

\*expressing your desire to work with the parents or CPS (e.g. “I hope the parents *can* provide a safe environment for their children. Their children love them very much, but they have not completed a drug treatment program.”)

\*hiding any disdain you might have for the parents or CPS or the attorney ad litem or WHOEVER

#### (2) DO NOT GET DEFENSIVE

–Defensive witnesses are not believable. It’s that simple.

–When a witness is defiant or visibly frustrated, it appears that he/she has something to hide.

–When faced with accusatory questions, just answer the questions honestly, even if you think it reflects negatively on you.

–*Example:*

☹Defense Attorney: So you NEVER went out to their house, did you?  
You never even SAW their home, did you?

☺Non-defensive

CASA worker: No, sir.

–I will ALWAYS be able to question you after a defense attorney. So, in the above example, I can show the court (or jury) that you did not go out to the house because the parent's newborn tested positive for amphetamines, barbiturates, marijuana, cocaine, and benzodiazepines. The conditions of the home were irrelevant.

**(3) HAVE CONFIDENCE.**

–Confident witnesses are believable.

GOOD	BAD
making eye contact with the defense attorney as you answer the question	looking at the floor
answering questions assertively	stumbling over your words
depending on yourself for answers	looking at me or your supervisor for an answer

**\*\*\*Believe in yourself and the job you are doing. It will show through!!\*\*\***

## SURVIVING A DEFENSE ATTORNEY

*\*\* Only painters and lawyers can change white to black.*

–Japanese Proverb

Nobody likes to be cross-examined. It is not a pleasant experience. And EVERYONE is nervous when they are being cross-examined on a witness stand. Expect to be nervous and don't try to fight it. It's perfectly natural.

You never know what a defense attorney is going to say in order to defend his/her client. Here are some examples of defenses against our allegations of abuse and/or neglect:

- something fell on the child and broke his arm
- mom didn't know her daughter was being abused by her step dad
- someone slipped something in mom's drink, and it caused a cocaine positive result in her urinalysis
- Johnny 2-year old plays a lot outside and gets a lot of bruises for no particular reason

These types of defenses can be defeated by the evidence we present. We are not concerned with these defenses today.

Today's focus will be on the number one defense strategy:

### DESTROYING THE ADVOCATE'S CREDIBILITY

The easiest, most effective way to shake the case up is to show the court that you are lying. And most defense attorneys could make Mother Theresa appear to be lying. It's what they are trained to do. It's what they are good at. Do NOT take offense to this tactic. Don't take it personally. This is purely a defense strategy intended to show the Court how the parents have been "wronged" by CPS, CASA, the ad litem, and the system in general. I am going to give you some tips on how to handle yourself when someone is calling you a liar.

**(1) Don't be offended.**

--When you begin to realize that the defense attorney is questioning your truthfulness, just say to yourself that this is all part of the game. If you were a defense attorney, you would do the same thing. Just go with it.

**(2) Don't get flustered.**

--Just take a deep breath, relax, and answer the question as honestly as you can. As long as you continue to answer honestly, you will do fine.

**(3) Take your time.**

–Pause for a moment and think about the question before you answer it. Silence is not on the record, but a rushed answer is.

–Defense attorneys will often try to speed you up, by asking "Isn't it true that..." over and over in machine gun-like fashion until they trip you up.

–Don't allow the defense attorney to rush you. You have every right to take your time in answering a question.

**(4) Don't guess at an answer. If you don't know, say so.**

--Admitting that you don't know is MUCH better than trying to make something up. That's what defense attorneys want. Once you start making stuff up, the defense attorney has caught you in his trap. The answer "I don't know" can be your best friend.  
–If the defense attorney focuses in on the fact that you don't know an answer, tell him the truth. Here is an example:

*Defense:* Advocate, you mean to tell me that you have NO IDEA when you went out to my client's house and looked at her home??

*Caseworker:* No, sir. I do not know. I cannot remember. I know it was on a Tuesday in December, but I cannot remember the exact date.

**(5) If you get confused, say so.**

–Defense attorneys are EXPERTS at confusing a witness on cross-examination. They WILL confuse you.

--If that happens, just say, "Mr. Defense Attorney, I am confused. Can you repeat the question?"

**(6) Don't give your opinion unless you are asked for it.**

--Even then, be careful. Try to only state FACTS, like what you saw, heard, smelled, etc.  
–Avoid answering questions with "I think" and "I believe."  
–Defense attorneys can twist your "opinions" around on you VERY QUICKLY.  
–Do not say: "I thought Miss Smith was drunk."  
–Instead say: "Miss Smith's eyes were bloodshot. Her speech was slurred. And her breath smelled like alcohol."

*\*CASA Advocates are REQUIRED to give their opinion regarding best interests. So, you WILL be stating opinions. However, it is always BEST to surround your opinion with FACTS. It's more difficult to poke holes in a fact-based opinion.*

**(7) Tell the truth.**

--This is the BEST way to survive cross-examination.  
–Answer every question as honestly as you can.

## **Preparation For Testifying**

- 1. Review all relevant files, reports and records regarding the case.**
- 2. Be prepared to answer questions about your investigation, your records etc. Consult with your CASA Supervisor to identify areas in which you might be challenged.**
- 3. Create a time line and a chronological summary of case events**
- 4. Attach copies of all your reports to the summary**
- 5. Be prepared to provide witness list suggestions to the DA and AAL**
- 6. With your Case Supervisor, arrange to meet with DA and AAL to discuss your testimony. Disclose any possible problem areas and review any questions.**

**Note: You may bring notes to the witness stand but beware...opposing attorneys are entitled to view the notes and have them admitted into evidence.**

## **TERMINATING PARENTAL RIGHTS**

### **ASSESSMENT OF REASONABLE EFFORTS**

- 1. Is there any service that the court, DFPS or CASA deems necessary which has not been provided?**
- 2. Is there any service which the caregiver feels should have been offered that has not been?**
- 3. Have there been any changes in services provided and if so why?**
- 4. Are there any other services which could be provided that would materially affect the ability of the caregiver to parent the child in the next six months?**
- 5. Has measurable improvement occurred in the conditions that brought the child into care?**
- 6. If some improvement has occurred, what is the estimated length of time before the child could be returned home?**
- 7. If the child were to return home, what services would have to be in place to assure a minimum sufficient level of care? For how long?**

## **TERMINATING PARENTAL RIGHTS**

### **ASSESSMENT OF GAINS & LOSSES**

- 1. How old is the child and at what age did/she first come into care?**
- 2. Can the child's placement history be reconstructed from the case record? Make a time line indicating each placement and its duration, including any returns home. Note reasons for moves.**
- 3. Describe the current parent-child relationship. How does it differ from the time at which the child was removed?**
- 4. In what ways does the child grieve the loss of the parent i.e. acting out, verbal cues etc.?**
- 5. What is the child's desire regarding placement at this time?**
- 6. Is there any ambivalence about returning home, i.e. fear of previously existing conditions?**
- 7. If the current caregivers are not a permanent option, what exploration has been done of other possibilities i.e. relatives, previous caretakers etc.?**
- 8. Has a professional evaluation of the child's attachment to parent figures been done?**

are or were considered as placement options.

17. Were the parents consistent about visiting their child. Were they on time for visits?

18. Were the parents appropriate during visits with the child. If yes, describe examples. If no, describe examples.

19. Do you know if the parents complied with the various court ordered services?

20. If yes, describe the nature and extent of their compliance.

21. Were the parents able to obtain and maintain stable housing?

22. Were the parents able to obtain and maintain stable employment?

23. Did the parents exhibit any signs of on going drug use.

24. Did the parents engage in any criminal activity you are aware of?

25. Were the parents arrested during the case? What for?

26. Were the parents the subject of any domestic violence incidents during the case?

27. Describe the various placement options considered in the course of the case by you?

28. Discuss why each was deemed inappropriate or appropriate.

29. Discuss which long-term placement option you favor and why.

30. Discuss why it may be necessary to terminate one or both parent's parental rights to achieve permanency for the child.

31. Be able to state why this outcome is best for the child.