

AVOIDING OR DEFEATING T.P.R.

Or, showing up the DSS Attorney

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Parent Attorney 1995-present

1. **CREATE ATMOSPHERE OF CIVILITY AND COOPERATION**
 - a. Like most D.A.'s, most DSS attorneys assume you are a waste of oxygen and that you will try to bully your way around the courtroom because so many attorneys do, show them you know what you are doing. Nothing intimidates them more.
 - b. Educate the DSS attorney and social worker about your role, i.e. "I don't personally care about you wanting this outcome/motion etc. but I am going to argue against it and here's why".
 - c. If your client/case has obvious weaknesses or problems that cannot be explained away or minimized, acknowledge them. It gives you instant credibility.
 - d. Send something modest to DSS offices at holidays, i.e. chocolate, gourmet coffee, etc. Let them know you think of them as a colleague.

2. **KNOW THE LOCAL RULES OF COURT**
 - a. These can be a real goldmine and are frequently ignored by DSS attorneys and the court.
 - b. All Chief District Court judges are required to adopt them for their district. Get it from the Chief District Court judge's secretary if no one in the Clerk of Court's office knows what you are talking about.
 - c. Don't put up with being handed dozens of pages of damaging reports when you walk into court, it probably had to be given to you days or weeks ahead of time. Object and move to continue.

3. **KNOW 7B.**
 - a. Sounds painfully obvious, but reread it every now and then. Reading it at the beach with adult beverage helps comprehension. It won't take long and you'll be amazed at what you forgot you knew.
 - b. Examine all pleadings filed by DSS carefully for compliance. Make sure all required attachments to TPR motions/petitions are present, pleadings are verified, etc. Object in writing if something is wrong or missing.

4. **READ THE NEW COURT OF APPEALS DECISIONS.**
 - a. Go to www.nccourts.org for Court of Appeals decisions. Keeps you up to date for free and you will usually see a case similar to one you have been discussed and will help you identify winning/losing issues.

5. FILE ANSWERS TO MOTIONS INCLUDING BUT NOT ONLY TPR's.
 - a. Filing answers in writing, though not always required, makes the court take your motions more seriously and helps keep everyone's eyes on the ball.
 - b. Helps preserve the record for an appeal if necessary.

6. ENGAGE IN DISCOVERY
 - a. The Rules of Civil Procedure apply. Use them! Send written interrogatories and requests for production of documents.
 - b. Depose social workers and witnesses for the department if needed.
 - c. Discovery will send the DSS attorney into orbit, so be prepared. You may have to convince a judge you have the right to discovery.
 - d. "10 failed drug screens" vs. "10 failed drug screens and 35 consecutive passed screens" at the permanency planning hearing
 - e. Reports to the court are frequently just plain fiction but you can't dispute it if you don't know the truth, and parents are rarely good historians.

7. WRITE THE DSS ATTORNEY AND COPY THE SOCIAL WORKER WITH COMPLAINTS/REQUESTS/QUESTIONS
 - a. There's only so many hours in the day, but clients love this.
 - b. You'd be surprised at how they (usually) write reams of paper right back to cover their own rears, versus never returning phone calls.

8. SUBPOENA WITNESSES AND DOCUMENTS, AND THE DSS FILE INCLUDING NARRATION/DICTATION TO COURT.
 - a. Again, be prepared for the DSS attorney to go into orbit. You may have to convince the judge you're entitled to this.
 - b. "Motion to Quash" versus in camera review.
 - c. Notice this on for hearing prior to the hearing date so you can get the file and read it.
 - d. Sometimes this helps DSS's case instead of helping you, so proceed with caution. Sometimes they forget just how much dirt they have on your client. If they say "you really don't want the whole file produced in court" they may just be right.
 - e. Ask client who might should be subpoenaed on their behalf and document it. Ask DSS ahead of time if they are familiar with any of them, i.e., your client's best friend and star witness has 10 TPR's and a meth lab

9. MEET WITH YOUR CLIENTS WELL AHEAD OF KEY HEARINGS IF YOU CAN FIND THEM
 - a. Sheriff/Police/Probation/Clerk of Court often knows where to find your client even when DSS and you do not

10. DON'T BE AFRAID OF WRITTEN MOTIONS TO MODIFY DISPOSITIONAL ORDERS, REPLACE SOCIAL WORKER, ETC.
 - a. Circumstances change between hearings
 - b. Some social workers can't be objective. DSS replaces them if they are too cozy with your client, as you should ask them to be removed if they repeatedly produce misleading reports, etc.
 - c. Same thing for the GAL: some are objective, some aren't