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Attorney Paula Werme
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Re: Right to Know Request

Dear Attorney Werme:

Your letter dated April 9, 1997 addressed to Tricia Lucas requested information relative to PD 86-26, Court and Legal Handbook.

Enclosed is a copy of the Inter Department Communication dated October 16, 1986 releasing PD 86-26 to DCYF staff..

Please be advised that PD 86-26 was adopted as policy, not subject to the rulemaking provisions of RSA 541 referenced in your letter.

PD 86-26 has not been supplemented or repealed since issuance.

Sincerely,

Rogers Lang
Legal Coordinator

RL/mmw

PD-86-26

COURT AND LEGAL HANDBOOK

By

Alex Komaridis, Esq.

Developed under contract with
the N.H. Division for Children
and Youth Services

State of New Hampshire
Department of Health and Human Services
Division for Children and Youth Services
6 Hazen Drive
Concord, New Hampshire 03301

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DCYS Booklet
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TABLE OF CONTENTS

APPENDIX Continued

PD 86-14 DCYS/Law Enforcement; Protocols and Policy

Protocols and Policy

SR 83-92 Social Services Assessment

SR 83-110 Case Plans and Case Review System for Children in Foster Care

SR 84-50 Social Services Files

PD 85-19 Foster Care Plan Revisions

CHAPTER I

Introduction

All Division for Children and Youth Services workers will, at some point, experience the pleasures of appearing in court and presenting a case of abuse or neglect. For some, the experience will be an utter delight causing an immediate application to the handiest law school. For most, the experience will be about as pleasant as a mouthful of canker sores.

For new or inexperienced workers, the first few times in a courtroom will be like stepping into another world where nothing is familiar and everything appears to be designed specifically to make their lives miserable.

For the experienced worker, such appearances may become more commonplace, and as they learn the rules and their roles in the process, they are less likely to believe that everything is designed to make their lives miserable, just more difficult.

The truly experienced and hardbitten worker, on the other hand, knows that the system was designed to make their jobs impossible.

All three groups are right to a point, but that's only because they are forced to operate in an area where they are not trained to perform.

Hopefully, this manual will help to alleviate some of those problems right from the outset.

This manual was written to give every worker, regardless of their experience, some working knowledge of the court system, the laws governing abuse and neglect, and guidelines for the effective investigation, preparation, and presentation of these cases.

As with any other manual, the various areas covered are approached from the point of view of what you should normally expect to encounter. However, since it

is intended to be used throughout the length and breadth of the state, and in virtually every court and in all situations, some of the contents may well appear to bear no relationship to the realities you'll face in some of our courtrooms.

The focus of the manual is on the courtroom; what belongs there, what to do to get there, how to prepare to operate there, and what to do once you are in there. Many relevant areas are touched on only briefly, or not at all. Consequently, you should always refer to the Division's other policy, procedure and protocol documents if you have questions that are not satisfactorily addressed in this manual (see Appendix).

While the manual is written as though each and every one of you will be prosecuting everyone of your own cases, in reality, there will be many instances where you will be represented by a contract attorney. That representation doesn't make this manual any less relevant or useful to you. You are the one who still has to do the investigation, obtain the evidence, find the witnesses, make sure that it's all admissible, prepare the case, and testify. In most instances, the contract attorney will merely go forward with what you've given him or her. If you've done the job right, everyone gains; if not, all suffer.

In writing the manual, the thrust was directed to the hardest cases that you will have to deal with; those where the abuse or neglect is by no means obvious, where the parents are extremely hostile and uncooperative, where the parents have retained your least favorite attorney and where the issues will be litigated to the last iota. While there are no guarantees that following this manual will win the case for you, it should make the task somewhat easier. And, in those cases where you are still mauled in court, at least now you should be able to figure out why.

What this manual will not do for you, no matter how diligently you study and apply it, is to make you into a latter day Clarence Darrow!

If it does, I'm opening a law school.

CHAPTER II

New Hampshire Court System - Overview

The New Hampshire Court system is essentially a three tiered system composed of the New Hampshire Supreme Court, the Superior Court, the Probate Court, and the Municipal/District Court.

The New Hampshire Supreme Court is almost exclusively an appellate court dealing with, and deciding, issues of law brought to it from the lower courts and from governmental bodies and agencies by parties dissatisfied by the decision of those lower courts, governmental bodies and agencies. In addition, the Supreme Court has the responsibility for the administration and functioning of all other courts in the state.

The Superior Court is the second tier of the system, and hears criminal, civil, equity and marital matters. While it is common to speak of a county Superior Court, there is literally only one Superior Court in the state, performing its functions at the courthouse located in each county. The justices of the Superior Court generally serve in more than one county, rotating from county to county on a monthly basis.

The Superior Court has exclusive jurisdiction over: Felony criminal matters; civil actions with an amount in controversy over $10,000.00; equity actions to determine the rights of parties as in title disputes; and in marital matters. It has concurrent jurisdiction with the District/Municipal Courts in: misdemeanor criminal matters; civil actions between $500.00 and ten thousand dollars; but also serves as an appeals court over certain District/Municipal Court cases and some local governmental agencies or boards. It is the only court in the state where jury trials may be held.

The Probate Court is essentially equivalent to a Superior Court, but its jurisdiction is severely limited to issues surrounding estates, adoptions, guardianships, and certain family matters.

The lowest tier of the New Hampshire Court System is District/Municipal Courts. There are 42 District Courts and 10 Municipal Courts throughout the state. About the only distinction between the two courts is that the District Courts generally have jurisdiction over several communities, while the Municipal Courts generally have jurisdiction over only the community in which they are located. However, as with any other general rule, there are exceptions here also. The Municipal Courts are slowly being phased out and becoming District Courts.

The subject matter jurisdiction of the District/Municipal Courts is concurrent with the Superior Courts as to criminal misdemeanor actions and civil actions between $500.00 and ten thousand dollars. The Court's jurisdiction is exclusive as to criminal violations such as traffic tickets and other minor disturbances, civil action under $500.00, landlord/tenant disputes not involving title to land, abuse and neglect cases and juvenile matters. However, the decision of the District/Municipal Courts over many of these matters can be appealed to the Superior Courts for new trials.

Of the three levels of Courts, DCYS workers can expect that they will never appear at the Supreme Court level as that Court deals almost exclusively with issues of law brought on appeals, with only attorneys appearing before the court.

DCYS involvement at the Superior/Probate Court level will occur on occasion. Workers can expect their appearance in the Superior Court in certain disputed custody hearings, and in those rare instances where abuse and neglect, or juvenile matters are appealed to that court. However, as greater emphasis and

attention is given to cases of serious abuse and neglect, the worker can expect to be called more frequently to testify in criminal cases against the perpetrators.

Appearances in the Probate Court should be expected to be necessary much more frequently for matters such as the Termination of Parental Rights, guardianship petitions, or authorization to provide emergency medical treatment for children in Division custody.

DCYS workers can expect to spend the vast majority of their time in the District Courts on issues of abuse and neglect and other juvenile issues. While many of these cases will be essentially routine, with a number being uncontested, all will require some knowledge of the legal system.

There will always be instances where the use of a contract attorney should be considered. As a rule of thumb, contract attorneys may be used in contested cases; in cases where the worker is new or inexperienced, and in those cases where there are complex legal issues.

These guidelines are merely provided to assist in making a determination when a contract attorney may be used. The actual decision as to when a contract attorney should be used is left to the sound discretion of the DCYS office Supervisor in the district office.

CHAPTER III

DCYS Relations with the Courts

The Division for Children and Youth Services is charged, by law, with one of the most difficult responsibilities that any governmental agency can bear, involvement in the most intimate and private aspects of family life and relationships. As a result, it can be expected that the opposition the workers face will be some of the strongest and most emotional of any legal proceedings.

The judges of the District Courts in which these cases are brought understand the nature and difficulty of this involvement and the ultimate end sought, the health, safety and well being of the children involved. Consequently, there is an inherent bias by the law in favor of the children, and for the worker. However, that inherent bias can be, and often is, depleted or destroyed by the Division and its workers, through their actions and failure to nurture and strengthen that inherent bias.

The judges of the District Courts are human and are subject to the likes and dislikes, opinions and biases that affect all humans. But, they are also almost exclusively attorneys, trained to expect that the law will be followed. They are usually part time judges who have substantial legal practices of their own. They are charged with running the courts over which they preside, and attempt to do so as efficiently as they know how.

These courts are generally quite busy disposing of from 50 to 100 cases per trial day. The matters heard on any given day can cover the entire gamut of the matters over which the courts have jurisdiction. Consequently, the Judges do not want to hear matters that do not belong in the court or which are not properly prepared or effectively presented. Additionally, while the judges are quite knowledgeable of the law in general, they are often not fully aware of the various technicalities of any specific matter being heard by them.

In order to properly and successfully operate in the District Courts, the Division and its workers must understand the laws under which they operate, the system in which they must work, and what is expected of them. Most importantly, the Division and its workers must be prepared to accommodate themselves to the court system and the particular District Courts in which they appear. There are a number of ways to accomplish these goals.

1. The workers must become thoroughly familiar with, and fully understand, the laws governing abuse and neglect. It is not enough that the workers believe that a child is abused or neglected. It must be shown that under the specific requirements of the law the child is abused or neglected.
2. The workers must know, and must follow, the precise legal steps required to being the case before the court and to show that the abuse or neglect occurred. Virtually any failure to follow the legal or procedural rules will cause even the best of cases to be thrown out of court.
3. The workers must be fully prepared to present the case to the court the first time through, without excuses, explanations or promises of future follow up. If you are not ready to give the court everything it wants or needs on the day of the hearing, you should not be in the courtroom.
4. Since every District Court judge is different, each will have certain quirks as to what he or she will want or expect. Every worker who appears before a judge should have some idea of what a particular judge likes, dislikes and expects.

5. Judges have tremendous powers and authority. They cannot be ignored. Whenever a Judge issues an order, no matter how good, bad, unreasonable, or illegal that order may be, it is a valid order that must be obeyed unless and until it is changed by that judge on a re-hearing or an appeal to a higher court. Never ignore or fail to comply with any order issued by a judge.

6. Judges expect, and must receive, the deference and respect that they are entitled to by virtue of their position. Never argue with a judge. However, that does not mean that you should not state your position forcefully, or to debate the various points, which you should do and have a right to do. But, in doing so, do it with the respect and deference that is due, and not as you would in a barroom brawl.
NEVER TRY FOR THE LAST WORD SINCE THAT IS AND ALWAYS WILL BE, THE JUDGE'S ALONE.

7. Be prepared to offer the judge your proposed solution or resolution to every case. However, be flexible in your approach and be prepared to provide alternates, even though they may not be the best.

8. Although judges are obviously members of their communities, they are rarely aware of the services or resources that their communities, the counties or the state have to offer, or the limitations that the Division and workers face. Educate the judge every chance that you get, both as to the Division's limitations and as to the resources and services available. Whenever possible, provide the judge with costs involved in any alternative and information as to who can or will pay for them.

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All of the above suggestions can be broken down or placed into two main categories. Those which must be accomplished in-house, in the Division and the district offices, and those which require contact and communication with the District Court judges.

The Division, district offices and the workers must insure that the workers are fully trained in the laws under which they work, the procedures to be followed in court, and the numerous resources that are available, or lacking, in the particular community, district, state or region. This training should be accomplished as soon as possible after a worker joins the Division, and should continue on an ongoing basis so long as the worker remains with the Division.

The contacts with the District Court judges should also be an ongoing process. It is recommended that each DCYS Supervisor set up a meeting with each District Court Judge within the district office's area of responsibility as soon as possible after assuming the supervisory position. The first such meeting should be on a one to one basis between the supervisor and the Judge for the purpose of becoming familiar with each other. Subsequent meetings should be held as often as the supervisor and the Judge feel it would be appropriate or necessary, and should be used to discuss mutual concerns and resolve any problems which may arise.

It would also be quite helpful if the supervisor could arrange to meet with all of the district judges in the area as a group. Such meetings could be used to update the judges on any changes of the law which affects the Division, for a statistical review of the Division's manpower and caseload, and could also be used to outline differences between the various District Courts, and to standardize those differences. These meetings could also be used to advise the

judges of any expansions or additions to services or resources, or the losses of such services or resources. The various meetings recommended will help substantially to ease the burdens on the Division and to ensure the court's fullest cooperation.

The immediate response of the Division and its workers to these recommendations will undoubtedly be that there is far too much work to be done, far too few workers and not enough time. Undoubtedly, that argument can be proved statistically, but unfortunately it is not true.

In all too many instances the failure of the Division and its workers to follow such recommendations means that the job was not done fully and properly the first time, and that it will have to be redone, or added to, supplemented, expanded, etc. Every time that such additional work is necessary means that the time consumed is time not available for other work. All too often, cases not fully and carefully prepared, require continuances, rehearings, further hearings or dismissal and reinstituting the case from the beginning. Most if not all of these additional activities can be avoided by doing it right the first time.

In other words, you can't afford not to do it right the first time.

CHAPTER IV

Statutory Responsibilities

The Division for Children and Youth Services was created pursuant to RSA Chapter 170-G. Section 4 of that chapter specified that the Division is responsible for, among other things, providing services for children and youth referred to it by the District Courts pursuant to RSA Chapter 169-C.

RSA chapter 169-C is entitled "Child Protection Act" and deals with the abuse and neglect of children.

The purpose of that chapter can be simply stated as follows:

1. To protect the child.
2. To keep the family intact if possible and to provide such services as may be necessary to accomplish that purpose.
3. To provide a safe environment for any child removed from the home, and to provide such a child with care, treatment, counseling, supervision and rehabilitative resources.
4. To provide an effective judicial procedure to accomplish these purposes.

While RSA 169-C concentrates on the procedural aspects of the court's involvement, it also establishes certain clear cut responsibilities that are assigned to the Division and its workers.

First, the Division is the primary agency charged with receiving any and all allegations of abuse and neglect. RSA 169-C:30. While these allegations generally come through calls to the Division, they may also come through local police departments or other social services agencies. RSA 169-C:29. All reports are recorded on forms 606 and 202.

Second, the Division is required to investigate all allegations of abuse and neglect that it receives. RSA 169-C:34. The speed with which the investigation is conducted is determined by the immediacy of the apparent danger to the child, but in no event may the investigation be delayed beyond 72 hours from receiving the report. (See policy 6004.2.)

The statute requires that the Division's investigation addresses four areas:

1. Determine the composition of the family involved, as to names, addresses, ages, sex and relationships of all children and adults in the household.
2. Determine if there is probable cause to believe that some abuse or neglect occurred, the nature or extent of the abuse or neglect, the potential of harm to the child or children.
3. Determine the immediate and long term risk to the child or children if they remain in the home.
4. Determine the nature and extent of the services required to alleviate the situation.

During the investigative process, the Division has the authority to order that photographs of the child be taken, and if medically appropriate, that X-rays of the child be taken. (RSA 169-C:33.) The Division also has the authority to request assistance and information from any agency of the State, political subdivision or school, and they are required to comply. (RSA 169-C:34 III)

Third, if the Division determines that there is apparent immediate danger to the child, the worker must notify the court for the purposes of obtaining an order permitting the immediate removal of the child. (RSA 169-C:6, V and VI, RSA 169-C:34 IV.)

Fourth, in every instance where the abuse or neglect causes serious bodily injury, either intentionally or by other than accidental means; where the child is sexually molested; where the child is sexually exploited; or where the child is the victim of a crime; and in other instances where the Division deems appropriate, the Division is to refer the case to local law enforcement officials with a copy of the referral being sent to the County Attorney's office. (RSA 169-C:38.) (See also the Protocol developed between DCYS and law enforcement officials.)

Once the investigation is completed and the worker reaches the conclusion that there is probable cause to believe that an abuse or neglect has occurred and it is determined that court intervention is necessary, the Division should, as soon as practicable, bring a Petition for either abuse or neglect in the appropriate District/Municipal Court.

The Petition is normally prepared on forms provided by the Courts, and must contain, as an absolute minimum:

a. The date, time, manner and place of the conduct alleged to constitute abuse or neglect and the statutory grounds upon which the petition is based;

b. The name, birth date and address of the child, if known;

c. The name and address of the parents, or custodian, if known;

d. The name and address of any other individual or agency having custody of the child, if known.

(See Chapter VI for a full discussion of Petitions)

To the extent that the Division's responsibilities are mandated by statute, they have been discussed or outlined to this point. However, once the Division or its workers file the petition, they bear additional responsibilities under the statute, not by virtue of the Division's statutory charge but because the Division is the Petitioner in the case. As the Petitioner, the Division is required to prepare and present the case to the District Court.

Once an adjudication of abuse or neglect is made, RSA 169-C permits the court to involve the services of a child placing agency to perform a variety of functions. The Division is only one of a number of child placing agencies including Catholic Charities of New Hampshire and Child and Family Services of New Hampshire. Thus, while it is possible that some other agency may assume the case as a result of a court order, this is a rarity, with the general rule being that the Division is ordered by the court to perform these functions. As stated in a previous chapter, it is imperative that the Division comply with all such orders.

Over the course of the discussion of the Division's responsibilities, certain terms have been used which need clarification and definition. The important terms to which the worker must pay particular attention and become thoroughly familiar with are: Abused Child, Neglected Child, Abuse, Neglect, Preponderance of the Evidence and Circumstantial Evidence. As each of the terms is clearly defined in the Statute or the Division's policy, the definition will not be repeated here. Rather the terms will be discussed in the general framework of the Division's responsibilities.

Yet in doing so, without further information, you could be dead wrong. For example:

What if the stern word or swat on the bottom is being used against a very small child who is already rigid with fear, or the stern word is a screaming tirade or the swat on the bottom is a vicious blow with a closed fist?

Or what if the oven is really a spacious bedroom with toys galore?

Or what if the wandering child is 6 years old or 17 years old?

"Abuse," "neglect" and what constitutes an "abused or neglected child" are all fluid concepts that bear different meanings to different people. To some, a stern word or a swat on the bottom may constitute abuse, while to others stuffing a child in an oven, as happened in Maine in 1985, is merely one method of discipline. To some, permitting a child to go pretty much where it pleases constitutes a method of fostering the child's independence, while to others the same circumstances constitute neglect bordering on constructive abandonment.

In both of the above situations it is highly likely that none of the positions is either realistic or sustainable. Consequently, it is relatively easy to ignore the one extreme while acting quickly and forcefully on the other.

Every social worker will, at some point, run into a situation where their heart will cry out for relief or justice. Yet, in some instances, that situation screams for a remedy through a worker's prejudices and personal beliefs, but will warrant no action under the laws of the state. Remember, under the definitions of neglect, the law specifically excludes deprivations due primarily to lack of financial means, and good faith treatment of a sick child by spiritual means or prayer.

When a worker determines that either abuse or neglect exists, that determination must be based on what would be accepted as either abuse or neglect, under our laws, by a reasonable person in the community. A child dressed in tatters in Beverly Hills is neglected, but the same child in the same tatters may be dressed in the normal, acceptable fashion in the back hills of the deep south. If the situation is not one which is clear cut, it must be discussed with supervisors, and if it is still questionable, it well may not warrant a petition for abuse or neglect.

The term "probable cause" is one that is used frequently and is defined clearly. Yet what constitutes probable cause is another area where the dividing lines are unclear. And, again, the standard used is what a reasonable person would believe if he heard the evidence presented. But here the burden of proof is really quite light. The worker need not prove that the abuse or neglect occurred. He or she needs merely to show that there is some reliable evidence that would suggest to a reasonable person that the alleged abuse or neglect did occur. The purpose is merely to show that something occurred which warrants a closer look or evaluation by a court. If you don't have enough information to get beyond this stage you, almost literally, have nothing.

Finally, "circumstantial evidence" is the loophole that can win cases that are otherwise unwinable. In most instances people often believe that in order to prove abuse or neglect you must show a child with bruises or broken bones, or one whose rib cage is showing from hunger. While these are the easiest cases to prove, they are not the only ones that can be won.

In those instances where there is no blatant physical evidence, the same purposes can be accomplished by a series of showings of facts, which, when put together, lead to a strong belief that the child is abused or neglected. These facts can be disparate as a child who is very quiet at an age where children are

normally rambunctious, plus a habit of falling asleep in school, plus a long record of treatment by a number of doctors or hospitals, plus clothes that are barely adequate for the weather. Separately, these factors may mean nothing, but together they could well point to a child who is so frightened that he or she is unable to sleep at home; one who is shuffled from doctor to doctor so that a pattern of failure to follow up cannot be easily seen; one who may be eating at a barely subsistence level; and one who, despite the young years, may have to dress himself. Put together it begins to form a pattern of a child who may, very likely, be neglected by his parents. And the clear showing of that pattern may well be sufficient for a court to make a finding of abuse or neglect, even though no single factor is sufficient to sustain such a finding standing alone.

CHAPTER V

Investigation

By Statute, whenever the Division is notified of a possible abuse or neglect situation, the Division is required to investigate. The speed with which the investigation is initiated, of course, depends on the nature of the allegation and the assessment of the potential harm to the child. So to is the extent and timing of involvement of law enforcement agencies as defined in the Child Abuse Case Protocals of May 1986.

The authority for the investigation is granted to the Division by Statute. However, the Statute is silent as to the extent of the Division's powers to conduct that investigation. What is clear, is that the powers of the Division are sufficient to require the cooperation of any agency, governmental unit or school approached by the Division for help or information. But it is not a power anywhere equal to that of the police. Where the police have the power to enter a residence in the event of an emergency and to remove a child the officer deems to be in immediate danger, the Division cannot do so unless the worker first goes to the court for an order directing that it be done.

This rather tentative power is both a curse and a blessing. It is a curse in that hours may be wasted in an emergency where minutes are precious. Yet it is a blessing in that the worker's leeway in pursuing the investigation is not fettered or hindered by a fear for the parents' rights. In other words, the limitation on the power to act is offset by a much freer ability to investigate without fear of violating rights or running afoul of technicalities.

Anyone who has ever watched television is aware that parties under investigation have certain constitutional rights, such as the right to remain silent, the right to an attorney, etc. However, these rights are applicable most

specifically during a criminal investigation by the police. Since abuse and neglect allegations are not, in and of themselves, criminal matters, and as the Division and its workers are not police, the reading or giving of the rights are not required. While it is true that proven allegations of abuse and neglect may ultimately lead to criminal charges, those charges are brought by the County Attorney or Attorney General, and it is at that point that full rights come into play and not before.

However, there are certain broader and less well defined but very real rights that the worker will have to deal with.

1. There is the right of a person to be secure in his home. That right guarantees that there will be no intrusion into the home by anyone without good and substantial reason. An allegation of abuse and neglect is just such a reason. However, the intrusion permitted is a very restricted one in that it is limited to only so much as is absolutely necessary to conduct the investigation, and no more. The mere fact that the worker may intrude in the home does not permit him or her to nose around looking for drugs or other evidence of misdeed unrelated to the purpose of the investigation. On the other hand, the worker, once in the home may take note of the openly observable presence of such evidence.

2. The parents have the right to raise their children in any way they wish, with whatever social, religious or other values they deem appropriate. However, these rights are limited, within very broad parameters, to those practices and values that are not abhorrent to society as a whole. Thus, while the parents may raise their children in an atmosphere of totally and uninhibited sexuality, they may not involve their children in sexual acts, either incestuous or otherwise.

3. The children in any family have a right to be safe and secure. That right includes the right to proper clothing, food, medical care and education among other things. This right is, perhaps, the greatest right that we deal with, and it overshadows the other rights discussed. It is also the right upon which the Division's investigatory power is based, since that right can only be properly enforced by the Division's involvement and investigation.

While this right of the child is clear, the workers must be careful not to read into it more than what is there. The rights essentially speak of material matters that must be provided such as food and clothing, but sets no specific standard to meet other than that they be adequate. To the extent that the right speaks to a child's emotional well being, it only precludes what would generally be recognized as emotional abuse. There is no right, under law, for a child to be loved, appreciated or wante[redacted]since there is absolutely no way to force a parent or any other person [redacted]feel those emotions. Consequently, as far as the law is concerned, [redacted]ose emotions are irrelevant so long as the child receives the proper care[redacted]

The rights of the perpetrator are far more problematic. While, under the law, the rights of all perpetrators are exactly the same, in reality, the nature and extent of these rights may differ markedly depending on the perpetrator's relationship to the family unit. It would be best to separate the perpetrators into four separate classificatio[redacted]

1. The person who is an integral [redacted]of the family unit through blood, or other legally recognized ties, such as a parent, brother, sister, etc.;

2. The person who is in the home and a part of the family unit, but not related by blood or other legally recognized ties, such as a single parent's live-in boyfriend or girlfriend;

3. A person who resides in the household for some period of time, but is not a part of the family unit, regardless of the legal ties, such as a boarder, or a transient visitor; and

4. A person who resides outside the home, is not a part of the family unit, b-t has substantial contact with the family, regardless of legal ties such as an aunt, uncle, babysitter, neighbor, family friend, boyfriend or girlfriend.

Whether or not criminal charges are brought against any particular person will depend upon the precise act alleged and the severity of the act.

The extent to which any perpetrator's rights are observed are least in the 1st class, and greatest in the 4th, merely by virtue of the closeness of the connection to the family. The closest connections are obviously in the 1st class as we are dealing with legally and biologically recognized ties and responsibilities. The investigation in this class gives the broadest latitude since the activities of all the persons will be scrutinized during the investigation, and close family members will rarely refuse to be interviewed with respect to the allegations made. Further, these people can be, and often times, will be charged under 169-C if the allegations are substantial, and, in addition, these individuals will inevitably be included in any plans for services and rehabilitation.

The 2nd class can be more difficult to deal with because of the tenuous, or non-existent legal ties. They can avoid much of the process merely by severing the relationship and leaving the household. However, such an act may cause a higher probability of criminal charges being filed.

If such a person does not choose to leave, then the person, and family would be treated in very much the same way that a family in the 1st class would be treated. If the person is a de facto guardian of the children, and chooses to remain in that status, it would appear that a petition against such a person

would be valid and that the person would have to comply with any Court order or case plan.

Persons in the 3rd class can be expected to be uncooperative, and to leave the household immediately upon the beginning of the investigation, either by choice, or at the insistence of the family. Any cooperation from such a person would be totally voluntary, as there is neither a legal, nor moral, nor familial obligation to cooperate. In this class it should be expected that criminal charges will be brought, and indeed pressure from the family unit to do so should be expected.

The 4th class presents the most difficult problem since they are not directly connected to the household, and indeed the abuse or neglect may have occurred at some place away from the household. Not only do these people not have to cooperate, but the Division has no right to enter or intrude into that person's household unless that household is in some way licensed by the state. Where there is no cooperation, the Division has little choice but to gather such information as it can, and to push for a criminal investigation by the police, county attorney or attorney general.

Regardless of the class within which a perpetrator may fall, the worker must always keep in mind that all perpetrators do have substantial rights, and that the greater the probability of criminal charges the greater the respect and observance that must be given to those rights. While the family relationship can be exploited to some degree in the investigatory process, be very careful not to exceed your authority or to unduly infringe on any person's rights.

It is inevitable that at some point, some person's rights will be infringed upon. Yet should such a situation arise it is unclear as to what could, or would result if an issue were made of the infringement.

So long as the matter remains in the District Court as an action under RSA 169-C, it is probable that the issue would be noted by the judge, who may comment on it, and perhaps, chastise the worker for overzealousness, but such an infringement most likely would not affect the ultimate outcome since it is not a criminal matter and no criminal sanctions could or would be applied. However, if criminal charges do arise, the results are less certain although the outcome would probably be the same unless the infringement was of such serious nature that it could not be reasonably ignored or condoned.

Since the purpose of the Division's investigation is to protect the children allegedly at risk, any criminal charges are solely a by-product of that purpose. Consequently, the direct involvement of the rights and requirements of the reading or notice of rights does not apply to the same extent as in a criminal investigation, particularly since the Division has only the most minimal police powers, and those are exclusively for the purpose of conducting the investigation. However, a problem arises since the Division is a state agency, and information discovered under its investigatory powers can be used in evidence at a criminal trial. Yet, the connection between the allegation, the investigation and the criminal charges are probably too tenuous for the prosecution to be burdened by inadvertent violations of what amount to peripheral rights. Consequently, it is probable that any but the most severe violation would not affect the criminal action.

In conducting the investigation, the worker must have clear cut goals that he or she seeks to accomplish. In most instances, these goals will be the same regardless of whether the allegations concern abuse or neglect.

1. The first goal is for the worker to be thoroughly familiar with, and thoroughly understand what constitutes, abuse and neglect. It is not unrealistic to expect that many allegations

would be unfounded, or that allegations of abuse would in reality be neglect and vice versa.

2. The second goal is to obtain all of the facts and information available relating to allegations. In doing so the worker should follow all reasonable leads, and should call on appropriate agencies, governmental units and schools. DCYS form 202 is designed to collect and record the needed information.

3. The third goal should be to test all facts and information for validity and reliability. Any fact that is inconsistent or offends common sense is automatically suspect. However, such facts should not be dismissed out of hand, but, rather, additional efforts should be made to either confirm or decisively refute such facts.

4. The fourth goal should be to take care to insure that the information obtained is collected in an orderly and logical sequence, to the extent possible. However, never ignore facts or information offered out of sequence since that information may be what ultimately leads you to your final conclusion.

5. The fifth goal, is to ensure that as much information and evidence as possible is obtained during the first contact and interviews with the family. Any failure to get it all, or substantially all, the first time most often means that you will never get it, since the family will close ranks and the needed information will not be forthcoming in second or subsequent visits, or that the stories will change.

6. The sixth goal should be to obtain sufficient reliable information for you to form a firm conclusion that the

allegations are either substantiated or unsubstantiated. If you are not sure, you are not finished.

7. The seventh goal should be to obtain the information in some permanent form that can be preserved, and later reviewed if that becomes necessary.

If these seven goals are met, the worker can rest assured that the decision on the allegations is the correct one, and that any case brought will be sustained.

In conducting the investigation itself, the worker must always act as a professional. He or she must always begin with an essentially neutral attitude, and must retain that attitude until the facts revealed clearly indicate that the allegations are founded. To the extent reasonably possible, the parents should be presumed to be acceptable, and the worker, from the beginning should assume that no abuse or neglect has taken place. When the child is the reporter, this neutrality must be balanced with an attitude of believing the child.

The worker's attitude should always be neutral, but pleasant. The questioning or interview should be as brief as possible, but as thorough as necessary. The worker should never feel rushed. He or she should be gently insistent and should never cross examine those involved, as you can only lose in the exchange. Always remain courteous and never lose your temper, and never threaten.

The first step in conducting the investigation should be an in-depth face to face interview with the person making the allegations to the Division if possible. Such an interview can provide numerous benefits that could be well worth the time spent.

In a face to face interview it would be possible to determine the person's feelings towards the persons against whom the allegations are made. It could well be that the person is motivated by hatred or jealousy, and merely seeks to hurt the family. If the person appears sincere, he or she could well provide specific dates and times of a series of incidents that could be substantiated by other independent sources and greatly strengthen the case. Such information, when properly shred with the family under investigation could well lead to admissions or confirmations by the family members. And finally, such information would, or could, narrowly focus the investigation to the precise area in which the abuse or neglect occurred.

If the interview has presented facts that can be clearly substantiated by others, it would probably be best to see those others before approaching the family. If the information received is substantiated by the other sources, the interview with the family should be much easier. However, if not substantiated then the allegations themselves become suspect. In either instance, such a preliminary investigation should help the worker in planning the course of the investigation and the interviews with the family.

When you first approach the family, identify yourself, the agency you're with, advise the person of your purpose, that you are required by law to conduct an investigation and ask their permission to enter and discuss the situation. If the family member refuses your entry, advise them that if they do not cooperate, you will obtain a Court Order and police assistance if you must, but in either instance you will conduct the investigation as required by law. If they still refuse, then do just that! However, there should rarely be a need to resort to such measures.

The first step in the investigation should be to obtain the name, age, sex and relationship of every person in the household. You have the right to interview each and every one of those persons, although they have every right to refuse to speak to you. Any interview should be done privately with each individual including the children if the parents are the persons against whom the allegations are directed. If it is the parents against whom the allegations re directed, they have no right to stop you from interviewing the endangered child or children outside the presence of the parents.

If there are no allegations against the parents and no indication of their involvement, it is permissible, and advisable, to have the parents present during any interview with a child. However, it must be made very clear that their presence is merely to calm the child, and that they are neither to speak nor question the child during the course of the interview, unless you request the parent's involvement. If during the course of the interview, it appears that the child is uncomfortable in the parent's presence, it may be indicative of the parents' involvement, knowing or unknowing, and the parent should then be asked to leave.

If the allegations are of abuse, the worker has the right, even over the objection of the parent, to ask the child to undress so that most of the body may be viewed for any evidence of abuse, such as bruises, scars or other marks. If they are noted, the worker has the right to take photographs of the child. Whether or not either of these rights should be used depends on the circumstances and the worker's discretion.

If the child appears to be injured or ill, and the parents cannot show any proof that medical care has been sought, the worker can insist upon taking the child to a medical facility for examination and X-rays, if appropriate. If the parents refuse, a in parte court order should be obtained immediately to accomplish that purpose, or in any emergency the police can be summoned.

If the allegations are of neglect because of inadequate food or clothing, the worker has the right to request that the child's clothes be viewed or that the kitchen cupboard be examined.

If there is substantial evidence or reason to believe that some person outside the household has committed the abuse or neglect, the worker has the right to interview such person. However, in every instance where an out-of-home perpetrator is found, the worker should, and in every case of serious abuse, the worker must follow the requirements established by the Protocol between DCYS and law enforcement officials. Only in those instances where the law enforcement officials decline to become involved, may the worker investigate charges against someone outside the household without police assistance.

It is strongly recommended that in every investigation, if possible, two people be involved and work as a team. There are a number of reasons for the team approach. The second person not only provides needed support, but also provides a second set of eyes and ears, and can confirm the impressions of the first. The second person also serves as a witness as to the procedures followed and the evidence obtained in the event that the investigation is questioned. The second person can also serve to ensure that children are not being coerced by the parents while the worker is interviewing another person. While it would be preferable for the two members to both be workers, it is not objectionable if one is a police officer. However, if that is the case, instructions on rights would be required to ensure that any information obtained was not tainted and therefore inadmissible in court.

Since some of the primary goals of the investigation are to obtain and preserve evidence, the workers should use whatever equipment may be available. Do not hesitate to use voice tape recorders, video tape recorders, still photograph cameras, anatomically correct dolls or any other equipment available.

However, whenever such devices are used, the persons interviewed should be informed prior to their use. In every instance, the recording devices should be started as soon as practicable and an introductory statement made with reference to the person's knowledge that the interview is recorded. Avoid, if possible, stopping the tape, since you could be accused of editing the tape to your advantage. If possible, use two recording devices that overlap for several minutes to establish continuity. The video tape and camera, should only be used for specific purposes such as the video taping of a child's response to anatomically correct dolls, or the camera to record bruises found on a child.

Even though recording devices may be used, it is always wise for the worker to take notes and record impressions. If it can be done at the time of the interview, so much the better, but, if it cannot be conveniently done at that time then it should be done as soon after the interview as possible. Do not wait several days as your memory will become imprecise and the value of the notes will decrease substantially.

CHAPTER VI

EX PARTE ACTIONS

The investigative procedure that was discussed in the preceding chapter, assumes that the abuse or neglect is not sufficiently severe to be an immediate threat to the child or children involved. Unfortunately, that is not always the case, and you will occasionally encounter situations that are so severe, and present such a serious danger to the child that immediate action is called for.

The standard to use to determine whether immediate action is required is one of Imminent Danger. RSA 169C:3 XV defines imminent danger as a "circumstances or surroundings causing immediate peril or risk to a child's health or life." While that definition is somewhat helpful, it is left up to you to use your own common sense and good judgment as to what set of facts falls within that definition. The only other guidelines that may be of use is to decide whether a reasonable person viewing that same set of circumstances would believe that imminent danger exists. Being faced with a situation such as this you must act immediately, but your options are quite limited.

RSA 169C:6 speaks to the issue of protective custody and removal of a child from his home and parents. That statute addresses the powers and authority of police officers, probation officers and social workers. The first two have the power and authority to act to remove the child while they are there. You, however, are required to contact the Court to obtain an order for the removal of the child, even if the danger is sufficiently great that a police officer could remove the child without such an order. That requirement can, on occasion, mean a critical loss of time while you attempt to comply. Of course, there is nothing in the statute that would preclude your calling for assistance from a police or probation officer, who could then act on his authority to remove the child.

Assuming that you encounter a situation of imminent danger, but do not call for a police or probation officer, your only other option is to obtain an order from the Court to remove the child. RSA 169C:6V specifies that you shall contact a judge or clerk to obtain the order. Just what type of contract is acceptable to the court and the procedure that you'll have to follow will be determined by the particular court and your relations with that court.

In some instances, a District Court may accept a phone call and verbal request of such order, while other courts may require a personal appearance, and, possibly, in some instances require a statement or petition in writing. It is imperative that each of you be fully aware of precisely what will be required of you by the particular district courts that you work with before such a situation arises. An emergency situation is the wrong time to try to resolve a bureaucratic or procedural snarl.

Any instance in which you contact a court, and raise an issue without the presence of the affected party, however it is done, constitutes an ex parte action or hearing. Courts hate ex parte actions since the judges are forced to issue an order based on totally one sided information. In addition, such actions also border on a gross violation of the absent, affected party's state and federal constitutional guarantee. Such actions are permitted only in an emergency, and only when there are provisions for an immediate hearing. RSA 169C:6IV provides for just such immediate hearing in that it requires that the court hold such hearing within 24 hours after the child is taken into protective custody, Sundays and holidays excluded.

While the threat of imminent danger is the most obvious situation for the use of ex parte orders, it doesn't appear that that is the only situation in which it can be used.

RSA 169C:34I clearly states that you are required to conduct an immediate investigation in cases of immediate danger, where the family may flee or when the child may disappear. If the latter two situations occur, it's relatively obvious that you don't have the time to engage in proper niceties to accomplish you job. But, if that family refuses to cooperate, you don't have the power to force you way into the house to investigate.

Again, you're left with two options, using the police or obtaining an ex parte order. However, the difficulty here is that there may be no particular evidence of imminent danger which can make the police practically useless. You only other option then is an ex parte order.

Such an order is specifically authorized by RSA 169C:34IV, and the order is directed specifically towards permitting you to investigate only. To the extent an ex parte order is used, it is very similar to a criminal search warrant. But, like a search warrant it is very strictly limited. It permits you to investigate and nothing more. If upon investigating, you find imminent danger, then you must obtain another order before a child can be taken. You have no authority for that action under the original order. And, like a criminal search warrant, no follow up hearing is necessary. That is because the scope of the order is limited, and once the order is used, and if once the order is used, and if nothing is found, there is nothing for you or the court to act on. If, on the other hand, something is found, you would then proceed in accordance with the usual provisions of RSA 169C.

There are undoubtedly other instances under which ex parte orders can be requested and granted. However, most of the other instances would normally fall under one of the categories discussed above.

There is one other interesting provision to RSA 169C with respect to ex parte orders, and that is RSA 169C:6VI. In an earlier chapter the jurisdictions of the various courts in New Hampshire were discussed, it was pointed out that the district courts have exclusive jurisdiction over abuse and neglect cases. However, RSA 169C:6VI states that ex parte orders can be issued by any court having jurisdiction over the child. While this particular statute has never been analyzed or reviewed, it would appear to mean that where a child is before some other court for some other reason that court also has the authority to issue an ex parte order. An example might be a superior court hearing, a protracted custody dispute, or perhaps a probate court acting on a guardianship matter. However, it is also probable that this statute is sort of a safety value for emergency situations, and it is an open question if such court would act on such a request.

To this point the discussion has concerned situations where ex parte orders can be sought and the authority to seek them. Now is probably a good time to discuss the way in which they are requested and what the orders shall contain.

Earlier it was noted that courts hate such orders, and will only issue them where the need is sufficiently great. It was also pointed out that the precise method to use for such a request would be dictated by the particular district court. But, no matter which court you're in, you can expect to have to present a certain minimum.

First, you are going to have to show the court that such an order is authorized. That can most easily be done by reference to either RSA 169C:6 or 34 depending on the situation.

Second, you will have to outline the specific need or reason for such an order. The stated reason for the request might be something such as "I

entered the Butcher Home on Kielbasa Lane, and noted that the child was located in the kitchen with his ankles tied and hanging upside down from a hook." That would probably indicate that there is a reason to believe that the child may be in imminent danger.

Third, you will have to ask for specific relief. That may be to remove the child from the home, the right to place the child in a hospital, etc. Whatever the relief requested it must be narrowly drawn and very limited in scope. If you ask to take the child out of the home, you must be prepared to tell the judge just where the child will be taken and if some service or care is needed, what the service or care is and who will provide it.

Fourth, of course, you will have to tell the court just who the parents are, where they live and the name of the child.

Finally, you should be sure that the order contain the specific date and time of the required hearing.

There have been several instances where an ex parte order was compared to a criminal search warrant, and that comparison is a fairly good one. The major difference being that the search warrant requirements are much more stringent, and there must be a good reason for the request, supported by affidavits. More suspicion is not enough.

With ex parte orders, mere suspicion is also not enough, but it is a whole lot closer to being enough. Mere the standard is that you have some reason to believe that something is occurring that need investigation. The something need not be confirmed for the order to be issued, but you should at least be able to state a reason for the request. An example of what would be an adequate reason may well be nothing more than a child in a particular house appeared to be crying

out in pain. But be careful, while such a reason might be sufficient for an ex parte investigation order, it certainly would not be enough for an ex parte removal order.

In requesting ex parte orders as in everything else you do, use your common sense, and make sure that you have a good reason for the request. The last thing you need is a reputation for a trigger overreaction to even minor situations. Get that sort of a reputation and you might as well stand in the center of town for a few hours each day crying wolf.

CHAPTER VII

Petitions

Once you have completed the investigation, you are faced with the responsibility of making a determination of whether the allegations are founded or unfounded. Your determination is recorded on forms 607 and documented in your case recording.

If unfounded, your final report will so state, and the forms will then go to the State Office where it is retained in the Central Registry for three years. (RSA 169C:35)

If the allegations are founded, you will then be required to take some action to resolve the matter.

The Division has some discretion in determining what is to be done. If the abuse or neglect is minimal, and the family recognizes that it needs help, the Division should, if possible, provide the help and monitor the situation without court involvement. But where the abuse or neglect is serious, or the family refuses to recognize its problems or refuses help then court involvement is imperative.

In order to get the court involved, the worker will have to prepare and file a "Petition for Abuse" or a "Petition for Neglect" as appropriate. As indicated in Chapter IV, there is a statutory minimum of information that must be included in the Petition. The failure to meet that minimum will result in the dismissal of the Petition.

The statutory minimum as set out in RSA 169-C:7 includes the following:

a. The date, time, manner and place of conduct alleged to constitute abuse or neglect and the statutory grounds upon which the Petition is based;

b. The name, date of birth and address of the child, if known;

c. The name and address of the parent(s), or custodian, if known;

d. The name and address of any other individual or agency having custody of the child, if known.

To the extent that the Petition is required to contain specific allegations, the Petition is probably far closer to a criminal complaint than to a civil writ, and should be scrutinized or reviewed with that standard in mind. However, that standard does not provide any significant burden since the courts have held that such a complaint is usually sufficient where there is enough information to inform the person of what he is accused of and under what statute, so that he will know what he must defend against.

Taking the standards one at a time:

1. The first relates to date. While a specific date is preferable such as October 4, 1992, the law recognizes that such precision is not always possible. Consequently, it is not uncommon to see a date stated as "on or about October 4, 1992". Where there is more than one act alleged, each occurring on a separate day, the following phrase can be used: "on or about October 4, 1992, November 12, 1992 and December 1, 1992." In this instance, the on or about would modify each of the three dates.

   Where there are a number of instances where an act occurred but you can only determine the last several, the phrase could be " on or about October 4, 1992, November 12, 1992 and numerous other occasions." If a number of instances occur in rapid succession you may be able to get away with using a phrase such as "on or about October 4, 1992 and several other occasions during that week."

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one may be home, or the address on file with the Division may be outdated. However, if the worker is aware of where either one or both of the parents is working, it is quite possible to have the service made at work. Therefore, even though the petition contains the home address, the court should also be provided with the location of the workplace, if known.

ROCKINGHAM County

Portsmouth District Court

Juvenile Case No.

PETITION FOR ABUSE OR NEGLECT

TO THE JUSTICE OF SAID DISTRICT COURT:

The undersigned represents that Estrillita Horstwhistle of 149 Wharf Road, Portsmouth, New Hampshire, being 7 years of age, and whose date of birth is August 4th 19 78, is ☒ abused ☐ neglected, in that Hansmier Horstwhistle (Name) of 149 Wharf Road, Portsmouth, NH did on April 11, 1986

at 149 Wharf Road, Portsmouth, at approximately 6:00 p.m. (Time and Location)

☒ abuse ☐ neglect said child, to wit: Did intentionally physically injure said child by severely beating her about the head and shoulders with a pool cue, causing the childs emergency treatment and admission in the Portsmouth City Hospital, contrary to the provisions of RSA 169-C:3II (c).

and that Hansmier and Gretelweiss Horstwhistle 149 Wharf Rd. Portsmouth N.H. is/are the person(s) or agency having care or custody of the child and that Hansmier and Gretelweiss Horstwhistle of 149 Wharf Road, Portsmouth, NH is/are the parents of the child.

DATE April 12, 1986

Pepe Lapuy Petitioner

Subscribed and sworn to by the petitioner, before me

Justice of the Peace/Notary Public

ORDER OF NOTICE OF HEARING

The foregoing petition having been presented, it is ordered that a hearing be held at (Time) on , 19 at the District Court and , the persons having custody or control of the child, is/are hereby summoned to appear with the child at the hearing.

Date

Justice/Clerk

STATEMENT OF RIGHTS

You are advised that the child will be represented by an attorney appointed by the Court (RSA 169-C:10). If you, as a parent, desire an attorney to represent your interests, it is requested that you retain one before the date of the hearing. If you are unable to afford an attorney, the Court will appoint one to represent you without cost. Your request for a court appointed attorney should be made to the court immediately. In the event that you need additional time to obtain an attorney or prepare a response to this petition, application should be made to the Court for an extension of time.
Parents and other individuals chargeable by law for the child's support and necessities may be liable for expenses incurred in this proceeding including the costs of certain evaluations and placements. RSA 186-C regarding educationally handicapped children grants children and their parents certain rights to services from school districts at public expense and to appeal school district decisions regarding services to be provided.

AOC 300-045 6/85

HILLSBOROUGH County MANCHESTER DISTRICT Court

Juvenile Case No.

PETITION FOR ABUSE OR NEGLECT

TO THE JUSTICE OF SAID DISTRICT COURT:

The undersigned represents that Semolina Catciatorri of 123 Spruce Street, Manchester, NH, being 8 years of age, and whose date of birth is July 4th 19 77, is ☐ abused ☒ neglected, in that ~~Mamala Catciatorri~~ Name of 123 Spruce Street, Manchester, NH did on April 15, 1986

at 123 Spruce Street, Manchester, NH
(Time and Location)

☐ abuse ☒ neglect said child, to wit: did not provide proper nutritional care for said child as necessary for his physical health and that his health is very likely to suffer serious impairment in that she fed the child on a diet of beer and pretzels on that date and for a substantial period prior thereto. Said lack of proper nutritional care not being primarily due to a lack of financial means of the parent contrary to RSA 169-C:3 XIX (b).

and that Mamala Catciatorri of 123 Spruce St. Manchester is/are the person(s) or agency having care or custody of the child and that ~~Mamala Catciatorri~~ of 123 Spruce Street, Manchester is/are the parents of the child.

DATE April 16, 1986

Piscatori, Pasta Palapa
Petitioner

Subscribed and sworn to by the petitioner, before me

Justice of the Peace/Notary Public

ORDER OF NOTICE OF HEARING

The foregoing petition having been presented, it is ordered that a hearing be held at _____ (Time) on _____, 19____ at the _____ District Court and _____, the persons having custody or control of the child, is/are hereby summoned to appear with the child at the hearing.

Date _____

Justice/Clerk

STATEMENT OF RIGHTS

You are advised that the child will be represented by an attorney appointed by the Court (RSA 169-C:10). If you, as a parent, desire an attorney to represent your interests, it is requested that you retain one before the date of the hearing. If you are unable to afford an attorney, the Court will appoint one to represent you without cost. Your request for a court appointed attorney should be made to the court immediately. In the event that you need additional time to obtain an attorney or prepare a response to this petition, application should be made to the Court for an extension of time.
Parents and other individuals chargeable by law for the child's support and necessities may be liable for expenses incurred in this proceeding including the costs of certain evaluations and placements. RSA 186-C regarding educationally handicapped children grants children and their parents certain rights to services from school districts at public expense and to appeal school district decisions regarding services to be provided.

AO-[illegible]100-045 6/85

CHAPTER VIII

Preparation of Court Case

Once the petition has been filed, the service made and the hearing date set, you will be expected to present your case to the court. In order to do that effectively, you will have to prepare the case for the court.

The preparation of the case may well be the most important phase of the entire process, and should have begun the minute that the report of abuse or neglect was received in your office. If you are not fully prepared for the hearings, then you are risking the possibility that the petition will be dismissed, that the child will remain at risk, and that all of your work and investigation will have been wasted.

The goal of preparation is to present a clear, concise and convincing case that the allegations made in the case are true, leaving the judge little choice but to make the finding you wish, and to shape the order in the manner you wish. Since abuse and neglect cases require at least three hearings if carried through the complete process, there will always be additional information to incorporate in your case, and changes in your presentation. However, there should be few surprises through these hearings, so the initial depth and scope of your preparations should carry you through the entire case with little modification.

When you finally get into the courtroom, you should be able to recite all of the pertinent facts of the case in a logical order, leaving out extraneous or irrelevant information. You should have all of the evidence or exhibits you plan to enter before you, in the sequence you plan to present them to the court. You should have all witnesses in the court house and ready to testify, and you should know what they can testify to, and how to get that testimony as efficiently as possible. Again, if these witnesses will be the method by which you plan to put exhibits in evidence, you must have the exhibit ready. You must ensure that you

know what must be proved, how it is to be proved, and that the necessary evidence has been entered to prove it all. Just as you must know how far to go, you must also know when your case is made and when to stop.

Once you have presented your case, you must be aware of the tack that the defense will take, and be prepared to meet it. And, finally, you should be prepared to present to the judge your case plan and recommendations for the treatment and rehabilitations of the family unit, or, if that is impossible, the steps to be taken to resolve the matter as expeditiously as possible.

Everyone who is involved in a court procedure will have different method of preparation, and the method may well change depending on the case. There is no one right way of preparing a case. However, all methods will include the following steps in some fashion or sequence.

1. Put all your facts and evidence in some easily understandable, and logically sequential order. Most often, that will be a date sequence, but it can easily be some other method, such as by subject matter. Use whatever sequence is best for you, but always make sure that it is easy for everyone else to follow.
2. Review all of the physical exhibits or other evidence that you have accumulated and that you intent to present to the court. Make sure that they are clear and make your point, and that you have them in the proper sequence.
3. Review all of your witnesses and what you expect their testimony will be. Make sure that they will be available for the hearings, and, if necessary, prepare subpoenas for all witnesses.
4. Review, again, the elements of the particular allegations that have been made and that you will have to prove at the time of hearing.

5. Go through the facts, the evidence and the witness's testimony again, but this time with an eye towards identifying what facts, evidence and testimony will prove each element of the allegation. It is often helpful to list each element, and the facts, evidence and testimony dealing with that element, together on a separate sheet of paper.

6. Evaluate the evidence to determine what you need and what you don't need at the time of trial. Remember, you need only enough evidence to prove each element of the abuse or neglect. You do not need to present to the court all of the evidence that you have. Often times doing that will annoy the court, and you can lessen the effect of strong evidence previously presented. Further, anything not used initially can always be used later as rebuttal testimony for any element attacked by the defense.

7. If you feel that any element is not sufficiently supported, determine what you need and what you can get to fully support that element.

8. Every case has some weaknesses. Determine what yours are, and the best way to overcome those weaknesses. That can be done in any number of ways. In some instances it is best to bring them to light yourself, while in others it is best to ignore them.

9. Be aware of any new case law, policy changes or statutory changes, and be prepared to use them to your benefit at the time of trial.

10. Prepare looseleaf trial notebook or case book where everything that you have is placed in separate sections. The sections can contain almost anything, and you can have as many as you wish,

but, the simpler the better. Some suggestions would be to have a pleadings section containing a copy of the petition and any motions or other pleadings; a direct examination section, listing all witnesses and a brief statement of their expected testimony, or a short list of questions to ask each; an exhibits section, either listing, in order of use, all evidence to be presented or actually containing the evidence; possible a report section containing all reports you've gathered, although these could be included in the exhibits section; and a cross examination section listing those persons who may testify in defense and a short list of questions to be asked.

Once you've completed your preparation you are prepared for the preliminary hearing, and in substantial part, for the adjudicatory hearing. Since the preliminary hearing is merely to determine if there is probable cause to believe the alleged act occurred, very little needs to be given to the court.

At the end of that hearing, the court will issue an order regarding placement of the child, and may make further orders. Usually, those orders, if made, involve either physical or mental evaluations of the child and/or the parents, with written reports to be provided. In virtually every case, the Division is required to coordinate the evaluations, pay for them, gather the reports and present them to the court.

If the court makes such an order, any information obtained will have to be incorporated in the preparations previously completed by adding to the witnesses, exhibits and reports.

The adjudicatory hearing is where everything gathered will be presented to the court, and the preparation will be tested to the utmost. If the

investigation and preparation were properly done the ultimate result of a finding of abuse or neglect is virtually assured.

Once the finding is made, the court will then again issue orders. Those orders can be to merely continue previous orders or the orders may be entirely new. If the previous orders did not address physical and mental exams, the judge may decide to do so now. In addition, the Division will be required to provide a social study of the family within 30 days so as to be ready for the dispositional hearing. Much of what is required by Statute for the social study should have been collected during the investigatory process. What was not collected must now be collected and submitted to the court along with any physical or medical exams at the dispositional hearing.

The preparation for the dispositional hearing is, really, the preparation of a solid case plan that is based on, and supported by the social study and physical and mental examination reports. In most instances the information in the social study and the various reports will not contain any surprises. In all probability these reports will merely confirm the impressions formed and the rehabilitation or services you anticipated would be needed from the beginning. However, in order to insure that the dispositional order gives you what you want, your social study, and your presentation in court, will have to be clearly and carefully crafted to make your point. Do not rely on the various reports to speak for themselves as all too often they contain so many coulds, shoulds and mights as to advise or recommend nothing. What you must do is draw a clear picture of the family, make your recommendations for treatment, and use the reports to support those recommen- dations. At the same time, you must also use your recommendations in such a manner as to show that they address any findings or concerns in the reports.

If handled properly, you will need only to give the court a brief overview of the situation, the reports and the recommendations to get your order.

CHAPTER IX

Hearings - Overview

Every case of abuse and neglect will have a minimum of three hearings, the preliminary hearing, the adjudicatory hearing and the dispositional hearing. However, since the dispositional hearing very rarely disposes of anything, you can usually expect follow-up hearings every three to six months for several years, a minimum of once a year, and until the children have reached their majority, some major change such as a Termination of Parental Rights is undertaken, or the family situation is resolved.

The preliminary hearing is to be held within 7 days of the return of the service of the petition on the parents or custodian of the children. The only purpose for that hearing is to determine whether there is any probable cause to believe that the allegations made in the petition may have occurred. The standard of proof for this hearing is very simple to meet, and only the most minimal evidence needs to be presented.

Probably cause is generally defined as any articulable facts that would cause a reasonable person to believe that the allegations may have occurred. Another good definition is contained in the Division's policy manual. Generally, you need present only enough evidence and of a type, that would make most people wonder if something may have occurred. The purpose of the hearing is not to place guilt or blame, but merely to convince a judge that something might have happened to a child which is contrary to the protection provided by the statute, that the parents were involved, and that a trial should be conducted so that the evidence can be presented in full, and contested by the parents, so that the court can make appropriate orders if warranted. Usually, the only evidence that is necessary is a brief statement by the investigating worker of the background and the observations during the investigation.

The rules of evidence almost never come into play at this hearing, and even hearsay evidence is admissible, as long as you can show that the hearsay is fairly reliable. The testimony may be as brief as the following:

"I am Levi Fahrquardh, a social worker for the DCYS. On October 4, 1992 the Division received a call alleging abuse occurring at the home of Count Dracula. I visited the home at 1653 Transylvania Ave. and spoke to the Count and Countess. While they vehemently denied the allegations, I asked to, and did interview the couple's son Vlad Tepes. The boy seemed very pale and anemic and somewhat underfed. He also appeared holloweyed, and appeared to need substantial orthodontia. Further, I noted a good bit of bruising on the boy's neck surrounding what looked like some kind of paired sores or wounds on each side of his neck.

I tried to take pictures of the boy and his injuries, but, unfortunately, while the furniture in the room came out clearly, I couldn't seem to focus on the boy.

I also noted that the boy had an inordinate fear of religious symbols and mirrors and refused to go outside to play."

That above is generally enough to persuade a court to find probable cause and order an adjudicatory hearing. If the court finds that there is probable cause to believe that abuse or neglect occurred, the court will then set a date for the adjudicatory hearing. That date should be within 30 days of the date on which the petition was filed with the court. However, a number of courts will read the 30 day limitation as beginning from the date of the preliminary hearing. Further, in some of the smaller courts, those which sit only one or two days a week, the date may actually exceed the 30 day limitation period.

In any event, the adjudicatory hearing is the primary hearing where the allegations made must be proven by the petitioner, usually the Division. The

standard of proof in this instance is one of a preponderance of the evidence. This standard is the easiest of the formal burdens recognized by the law. Under this standard, the petitioner need only show that, based on the evidence, it is more likely than not that the abuse or neglect did occur. Another way of stating the burden might be to say that the case is made if 51% of the evidence tends to prove that the abuse or neglect occurred.

The adjudicatory hearing is the most formal of the three hearings, and has all of the trappings of a trial. Witnesses are called by both the petitioner and the respondent (defendant) in the usual order. The witnesses are subjected to direct and cross examination. Objections are made, argued and ruled upon, and closing arguments are made if desired.

While many of the trappings and formalities of a full trial are observed, the law, RSA 169-C:12, does not require that the court, or the parties, be bound by the technical rules of evidence. The court may, in its discretion, admit normally objectionable evidence which it considers relevant and material. While the terms relevant and material are terms of art with very specific meanings, there is really very little distinction between their meanings. What they both generally mean is that the evidence must, in some way, relate to the issues at hand, must tend to move the case forward and must add some evidence towards proving or disproving the allegations.

As stated earlier, the evidence necessary at a preliminary hearing is minimal at best. However, that is no longer the case at the adjudicatory hearing. At the adjudicatory hearing you will have to produce and present all of the evidence to prove each and every element of the act alleged.

While in some cases that are clear cut, all that may be necessary is one witness and some photographs, in others, where the facts are not so clear, it may require a number of witnesses, photographs, tapes, etc. Even though the court

can accept what would be normally objectionable evidence, you'll find that in an adjudicatory hearing the amount of such evidence that will be allowed will be limited. Consequently, you can expect the opposition to object strenuously to such evidence. Often times the objection will be sustained by the court, so you should never rely on such evidence unless there is virtually no alternative.

Based on the testimony and evidence that are presented, the court will make its determination as to whether or not abuse or neglect occurred. If the evidence is insufficient, the burden of proof is not met and the case is dismissed. However, if everything went as planned, the court will make a finding of abuse or neglect, as appropriate, and will schedule a dispositional hearing.

The purpose of the dispositional hearing is to devise a plan under which the children will be safe and the family will be strengthened and the problems resolved. Towards this end the court will often issue orders at the end of the adjudicatory hearing for various examinations and evaluations to determine the best method to accomplish the purpose.

While the dispositional hearing must be scheduled for a date within 30 days of the adjudicatory hearing, the dispositional hearing can be continued beyond the 30 day period by the agreement of the parties. Such continuances are frequently granted, because the agencies required to do the evaluations are often not able to comply with the 30 day requirement.

At the time of the dispositional hearing there are, usually, none of the formalities of the previous hearings. However, it is still the responsibility of the Division to go forward in the matter. The usual way of accomplishing that is to tell the court of the actions taken since the adjudicatory hearing, and to provide the court with the social study and any other reports obtained. The court should also be provided with formal recommendations for the dispositional order based on the various reports. The recommendations should, if appropriate, specify the appropriate agency or governmental unit which is to bear the cost of any services provided.

While the Statute speaks of only 3 hearings, there are, inevitably a series of other hearings to monitor the progress of the family, to recommend changes in the court's order and the manner of treatment, and ultimately, to terminate any further involvement of the court and the Division with the family. These hearings are usually 3 to 6 months apart, and are usually very informal. (There is a State statutory minimum of 1 court review per year and IV-E regulations require either a court or administrative review every 6 months).

All of the hearings, regardless of purpose or number, are closed hearings. Only those persons directly involved, or their representative are permitted in the hearing room. The hearing room itself is required to be some room other than a courtroom used for criminal trials. However, just where such a hearing is conducted will depend on the facilities available in the various courthouses.

Of course, since the Division's workers appear in virtually every District court in the state, what has been outlined above is what can be expected in the most formal courts. And, since every court and every judge is different, you can expect that the standards, the procedures and the formalities observed to be quite different from court to court. However, unless you have had some experience with the court, judge and opposing attorney in past cases, you must assume that you have to prepare for the most formal hearing and presentation of your case.

CHAPTER X

Consent Decrees

Since almost no one relishes the thought, or the reality, of plowing through the morass of various full blown hearings, there is an alternative that can be used, the consent decree.

The consent decree, or consent order as it is called in the Statute, RSA 169-C:17, takes the place of the adjudicatory hearing, and sets the terms and conditions that all parties must follow in the case. It is is worked out and written up by the parties, who then sign it and submit it to the Court. Once the Court accepts and approves the decree, it is a valid and enforceable order just as if it were written and issued by the court after an adjudicatory hearing. However, unlike other court orders, this order cannot be appealed by any party since all parties agreed to it and signed it.

While the consent decree appears to be a Godsend to the weary, embattled and overworked worker, the entire concept is loaded with pitfalls for the unwary, especially when dealing with young children. A worker caught in one of those pitfalls can quickly develop an intense preference for the heated battles of contested adjudicatory hearings.

As stated earlier, the consent decree takes the place of the adjudicatory hearing, sets the terms and conditions to be followed and cannot be appealed. It shows a willingness by the parent to cooperate, and to seek whatever services are necessary to reconstitute the family into a viable unit. But, as with any other agreement between opposing parties, it is reached through negotiation and compromise. Each side must give up something in order to get the decree written and signed, and that is the first and largest pitfall.

Virtually everyone has some degree of pride. Parents accused of abuse or neglect are no different, and in many cases, their pride, ego or self concept is

bruised by the mere allegation alone, and even more so by their being dragged into court to answer those allegations. Consequently, they are in no hurry to agree to a finding of abuse or neglect being entered against them even through a consent order. The abuse or neglect finding will usually be the primary target of their negotiations towards a consent decree. Yet, that is precisely the last thing that you should give away when working towards the decree, and then only for some truly compelling need or reason.

Consider it from this point of view. Once you have a finding, whether it is by the court after a hearing or by agreement of the parties, the baseline has been set with the abuse or neglect being recognized and the perpetrator being identified. Since there is no question as to the act or the actor, everything else that needs to be done flows naturally and inevitable, although not always smoothly from those facts. The parents, if they want a resolution to the problem, must follow the orders issued or the terms and conditions set. There can be no going back. If they fail, you have everything that is needed in order to pursue a Termination of Parental Rights (TPR) action under RSA ch. 170-C.

Now consider what happens if there is no finding made as to the alleged abuse or neglect.

First, the allegations remain merely that. There is nothing definite to state that the abuse or neglect occurred or who caused it.

Second, if the parents fail to live up to the agreement, they may be found in contempt by the court. But, that's a big "maybe" which usually doesn't happen, and if it does the courts virtually never impose sanctions. Most often, everyone will sit around debating various alternatives to those contained in the initial decree, and, most often, will settle on something less demanding than contained in the original decree.

Third, what if the parents live up to the letter of the decree, but not to the spirit or intent? Say that they attend all required counseling sessions, but spend each session sailing paper airplanes. What have you accomplished?

Nothing! Where do you go from here? Back to the last part of Second above where you debate down to a lesser burden.

Fourth, the parents finally reach an end point and have accomplished nothing other than to develop in you a propensity for climbing walls and chewing rugs (Bigelows are usually the tastiest). Without a finding, you can't go for a TPR, and, when the case is old enough, there is little that the court can do and less authority to keep the child away from the parents.

Your only solution at this point is to let the child go home, then wait a few months for a new incident of abuse or neglect, and then do it the right way. But think of how much easier it would have been, and how much work and aggravation you would have saved if you had done it right the first time.

That is not to say that consent decrees don't have a place in the scheme of things. They do, and they can be useful when they are called for and appropriate. However, when they are used, you should always insist that there be a finding of abuse or neglect included.

In those rare instances where there is a compelling reason for entering into consent decree without a finding, there are other requirements that either must or should be included.

First, under Federal Guidelines, and regardless of a finding of abuse or neglect, the following statement must be included:

> "the removal of the child (children) from the home is the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of the child (children)."

For your information, the failure to include that statement, in enough cases, would mean the loss of federal foster care maintenance payments to the state. For the parents' information, the judicial determination is the court's acceptance and approval of the consent decree.

Now for the SHOULDS:

In every consent decree not including a finding of abuse or neglect, you SHOULD insist that the decree be limited in effect to a period of no more than three months. At the same time, you SHOULD insist that if the parents have not made substantial progress, the consent decree shall expire, and an adjudicatory hearing on the original Petition is to take place. You should <u>not</u> agree that any information obtained during the three month period be excluded from an adjudicatory hearing.

At the end of the three month period, you will have the opportunity to assess the progress made by the parents. If they have made substantial progress and are cooperative, you have the option of continuing to work with them, but with no further court involvement, or to extend the consent decree, with appropriate changes for another three months. If the parents have failed to make progress, you have the option of going to an adjudicatory hearing with additional evidence and proceeding as you normally would.

Carefully handled, consent decrees can be useful. Carelessly handled, they can easily become the gateway to Dante's eight circle of Hell.

Examples of Consent Decrees are shown on the following pages:

STATE OF NEW HAMPSHIRE

CHESHIRE, SS:

KEENE District Court
J-49.7

In Re: Tiny Tim

CONSENT DECREE

The parties hereto stipulate and agree as follows:

1. That there is sufficient evidence to find that the parents, Mr. and Mrs. Bob Cratchett have abused the minor child, Tiny Tim, in that he has a significant deficiency of his left leg requiring the use of a crutch.
2. That the parents shall, forthwith, provide to the minor child such medical care as may be necessary to restore the full use and functioning of the leg.
3. That the parents shall enter into counseling with Ebenezer Scrooge for such period as may be necessary to resolve such problems as the family may now be encountering.
4. That Ebenezer Scrooge shall provide to the court, at least every three months, a report on the progress of the parents.
5. That the parents shall provide to DCYS such authorization as may be necessary for the worker to monitor the medical progress of Tiny Tim.
6. That a hearing shall be scheduled not later than 6 months from the date of this decree to monitor the progress of Tiny Tim and the Cratchetts.

7. That any party hereto shall have the right to request an earlier hearing if warranted.

DCYS

Mr. Bob Cratchett

By Jacob Marley SW III

Mrs. Bob Cratchett

Approved 10-4-92

Charles Dickens, Justice

STATE OF NEW HAMPSHIRE

MERRIMACK, SS: CONCORD District Court

In Re: Huey, Louis and Dewey Duck

CONSENT DECREE

The parties hereto stipulate and agree as follows:

1. That the above named minor children shall be removed from the home of Donald and Daisy Duck.
2. That the removal from the home is the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such children.
3. That Donald and Daisy Duck should attend counseling sessions as established by Gladstone Gander.
4. That Gladstone Gander shall provide to the court a report as to the progress of Donald and Daisy Duck within three months of the date of this decree.
5. That this decree shall expire at the end of three months time from the date hereof unless extended by agreement of the parties and approval of the court.
6. That in the event Donald and Daisy Duck shall not make significant progress through counseling, DCYS shall have the right to bring the matter forward to be heard at an adjudicatory hearing.

7. That all parties hereby waive any time limits as may be established by RSA 169-3 with respect to adjudicatory, dispositional or other hearings.

8. That a hearing on this matter shall be held no later than 90 days from the date hereof.

DCYS

Donald Duck

By Scrooge McDuck

Daisy Duck

Approved 10-4-92

Goofy, Justice

CHAPTER XI

Hearings

In virtually every case where the Division becomes involved, you, as the petitioner and representative of the Division will bear the pivotal role. The entire burden of proving the case will be on your shoulders, and what you do, or fail to do, will determine the final outcome. If you have properly investigated and prepared the case, then your job will be relatively easy and the results should be a finding in your favor. If you are not fully prepared, you should expect a very long and very uncomfortable time in court. If you get a finding in your favor in such an instance you can only credit luck.

In Chapter III it was pointed out that there is an inherent bias in your favor simply because of the normal human instinct to protect our young. The legislative decision of selecting the easiest burden of proof, and the refusal to burden the proceedings with the technical rules of evidence is an institutionalization of that human instinct. But that bias can be destroyed by ineptitude.

In dealing in a court situation, you may be taking on the role of an attorney even though you are not one. While you will not be held to the same high standard that is expected of an attorney, you will be held to a higher standard than the average citizen. Since you must act the part, then you must play the part. Every person who comes into a court in the role of attorney should at least appear to fit the part.

-- Dress appropriately and professionally; do not stroll in wearing blue jeans and an old sweatshirt. Even if you don't think clothes should matter, that kind of an appearance from any professional can do nothing but annoy or offend the court.

-- Being in a court room, you are expected to and must follow the rules of etiquette. Always stand when the judge enters or leaves the courtroom.

Remain standing until the judge or bailiff asks you to be seated. Always stand when addressing the court unless the situation or the judge indicates otherwise. Always use the terms "Your Honor" or "Sir" or "Ma'am" when addressing the court.

-- Always speak loudly, clearly and succinctly.

-- Never argue with the judge, the witness or other counsel.

-- Always state your case forcefully and with confidence, even when you're not sure you're right, since the judge and opposing counsel may be even more in the dark than you are.

-- Never, ever purposely mislead the court or misstate the evidence. If you are ever caught, you can just about bet that your case is lost regardless of how good it is.

-- Always treat everyone courteously, even when it hurts.

-- Never lose your temper or get upset during a hearing; that's the fastest way of losing the initiative and have the case taken away from you by your opponent.

-- Use common sense in what you do and say and how it is done and said.

-- Be flexible and alert. A small change in testimony or evidence may require a small but rapid shift in tactics or order of presentation of evidence.

-- Watch and listen to the judge. He will often signal, consciously or unconsciously his acceptance or rejection of a position, or whether he wishes to hear more on any given subject.

-- Always listen to the witness even though you may think you know what he will say. It is not uncommon for a witness to say something different than you expect, and that small change may either win your case or kill you.

-- Most important, be comfortable. Make the courtroom yours, and everyone else, including the judge, your honored guest.

While courts and courtrooms differ, you, the petitioner, should always sit at the table on the Judge's left. However, that is not a hard and fast rule, and if the parents' attorney gets there first don't make an issue of it. Once the Judge has entered and asked everyone to be seated, it is usually wise for you to remain standing since you will have to start and will have to stand anyway. However, do not begin until he indicated that he is ready.

Always begin by introducing yourself, and your position with the Division. State the name of the case, the nature of the case, i.e., abuse or neglect, the name of the affected children, and specify who the petition is directed against, i.e., father, mother, both.

Next ask the court if it wants the names of all persons present. If yes then introduce and point out everyone you know. If there is someone in the courtroom you don't know, say so and the court will ask. If there is someone in the courtroom who you believe doesn't belong there, then say so, and let the court decide.

Once the preliminaries are over, you will have to begin the presentation of the evidence. As the investigating worker, it is usually wisest for you to be the first witness so that you can lay the ground work for everything that follows. Inform the court that you will testify first and take the stand. Take with you your notes, all reports, tapes or other evidence that you intend to enter into evidence. Remain standing as you will have to be sworn in. Once sworn you may be seated and may begin to testify. Speak slowly, clearly and loudly enough for everyone to hear.

Your testimony begins with identifying yourself and your connection to the Division. You should also state how long you have worked for the Division, and your educational and training background in social work.

Begin your recitation of the facts with the date, time, and nature of the

complaints received by the Division. However, do not disclose the name of the caller unless you have been authorized to do so or have been ordered to do so by the court. Tell the court when you began the investigation, who you contacted, and whether the information tended to confirm the initial complaint.

Tell the court of when you contacted the family, who you spoke to, and your findings. If you took any pictures or made any voice or video recordings, offer them into evidence at the appropriate points. Make sure you have the appropriate playback machines in the courtroom, and in working order. However, do not play the entire tape for the court unless you are asked to, but expect that you will be asked. It is not usually a good idea to use voice tape unless you have a clear admission of the allegations by the parents. Then play only the admission and whatever is relevant immediately before that admission.

If the anatomically correct dolls were used, have them available during your testimony and display them for the court. However, it is not necessary to disrobe the dolls to show their anatomical features. Nor should you re-enact the manner in which the child treated the dolls during the interview, but rather describe the actions verbally.

Once you have stated your testimony, and presented whatever other evidence you will enter, stop and tell the court that you are done. At this point the parents, or their attorney, will have the opportunity to cross examine you.

Every attorney has his own method of cross examination, but every method is designed to probe your testimony and to find and exploit any weaknesses in the hope of destroying your credibility. So long as you have told your story as simply and as straightforwardly as you're able, there is little chance of finding or exploiting any weaknesses. However, regardless of how experienced you may be, or how well prepared, always expect that you will suffer some dents by the time the cross examination is finished.

When the cross examination is finished, you have the right to add such additional testimony as you feel may be necessary to correct any wrong impression created by the cross.

Once you have completed your testimony, make sure that you have handed the judge all of the evidence that you presented. Then return to your table and call the next witness, if any.

The sequence in which the witnesses should be called varies from case to case, depending on a number of factors such as the severity of the abuse or neglect, the nature of the abuse or neglect, and how many other persons or agencies were involved. In general, the witnesses should follow some general sequence where each additional piece of information can be seen as resulting from the previous witness's testimony and leading to what the next witness will say.

Two examples may be as follows:

1. The allegations are neglect. You testify that you went to the home and found it unheated in the winter, little food in the house but beer cans strewn about, a general unhealthy and unsanitary home. The second witness may be a child's teacher or guidance counselor who may testify to the child's arrival at school inappropriately dressed, the theft of food, falling asleep in class and excess absences. The third witness could be the school nurse who testifies to continual colds, evidence of malnutrition, earaches and dental problems. The fourth witness may be an emergency room doctor to whom you had the child taken who testifies that the child is severely under-nourished, has lost some hearing as a result of longstanding untreated ear or throat infections, etc.

2. In an abuse case, you would testify to seeing and photographing some bruises. A school teacher or nurse may testify as to several incidents of absences after which large faintly discolored areas on the face etc. are noted. The third witness may be a doctor with X-rays who may testify as to old breaks or dislocations, definite recent events of bruising and his opinion that these are all consistent with abuse.

In each of the cases the sequence could be changed or one or more witnesses omitted. But, if used in the sequence outlined, you would, in each instance, set the background that started the case, the teacher or school nurse would show how the child has been affected in the past and the result of the conduct. This shows a definite, long standing pattern which negates the possibility of a single unfortunate incident or accident, while in each case the doctor gives the definite statement of how the child got to that point.

Each of the witnesses would also present certain evidence for the court's consideration such as school grades, school testing results, school health records, hospital records, results of physical exams, views of X-rays, etc. Of course, each of these witnesses will be cross examined by the parent's attorney.

Once you have presented your case, pause a moment and quickly review the testimony and the evidence and make sure that you've covered all of the elements and that the judge has all of the evidence. If you're finished, STOP. If you've missed something, then put it in now or it will never get in. Once you're sure you've made your case tell the court that you "rest".

When you've rested, it is the parents' turn to put on whatever evidence they wish. In effect, your role and theirs are reversed. They will call the witnesses, conduct the direct examination of the witnesses and put in evidence, while you will cross examine those witnesses.

Once the parents' case is complete, there is an opportunity to make a final argument, although most judges would just as soon dispense with it. However, if one is to be made, remember that the parents will go first and you will have the last word.

As you can see, each of the persons involved in the trial plays a definite role. The judge's role is obvious. Yours is to choreograph the testimony and evidence of the witnesses so as to sway the judge's opinion in your favor. The parents' attorney's is to disrupt, disrupt, discredit and disprove everything that you do so that his clients will walk away without any harm, question or penalty.

However, everyone involved is also restricted in how they can perform their roles. Each witness has a right to tell his or her story without unreasonable interruption or distraction. Neither you nor the attorney may harass or attempt to intimidate any witness. Neither may attempt to blatantly prejudice the court by any means, and neither may present inflammatory or prejudicial material merely to sway the court.

How the parents' attorney will attempt to destroy your case will depend on the attorney and the tactics he or she chooses to use. Some will attempt to bully you, your supervisor and the witnesses with threats of a suit or the filing of a complaint. Some will be condescending, or will treat you somewhat like a leper in the hopes of getting a rise out of you. Some will attempt to embarrass you or to fluster you by various means. Some will attack your competence or will even attack you personally. Some will attempt to make the entire situation your fault. In most of these instances the best procedure it so ignore the various attempts. Never permit the opposing attorney to make you angry. Always answer with courtesy. If you are not the one bearing the brunt of the attorney's efforts, be prepared to protect your witnesses by objections raised. Always stand your ground and present the case your way regardless of what the attorney may do. For you to respond to his tactics will be to begin playing his game by his game by his rules and you cannot win.

CHAPTER XII

Evidence

Throughout this manual, various terms have been used, such as testimony, facts and evidence. However, all of these terms relate to a larger body generally denominated as evidence.

Perhaps the best way to describe evidence is to say that anything brought to the attention of the court that bears on the issue of a case is evidence. Consequently, all of the testimony of all of the witnesses is evidence, all of the reports submitted to the court are evidence, X-rays, photographs, anatomically correct dolls, voice and video tapes are all evidence.

Evidence can be categorized in numerous ways, depending on who is categorizing and the purpose for the categories. One way is to divide it into oral evidence, documentary evidence and physical evidence. Oral evidence is anything said in the courtroom on the issues in question. Documentary evidence is anything that was written relating to the issues and submitted to the court. Physical evidence is any other solid object that can be seen, touched, etc.

However, this concept can be somewhat misleading as there can be some overlap between the evidence. For example, a letter over which there is controversy as to contents, if presented and read during trial can be considered to be oral evidence in some respects. On the other hand, if the issue is not the contents, but its existence, the letter can become physical evidence.

Another method of categorizing evidence is to divide it into inadmissible and admissible evidence. About the only way to define the two is to say that inadmissible evidence is any evidence that the court refuses to admit, while admissible evidence is everything else. The focus in any issue of admissibility is to see if there is any valid reason to keep it out. If there is none, it is admitted. However, even evidence that virtually everyone would agree is inadmissible can be admitted if the judge believes that there is a good reason to

admit it, and if he believes it will be helpful.

While there are innumerable objections that can be raised at trial, the actual number that you will normally face is relatively small. Those objections are, irrelevant and/or immaterial, no foundation, opinion, incompetent, leading, non-responsive, argumentative, prejudicial, asked and answered, assumes facts not in evidence, compound and hearsay.

IRRELEVANT OR IMMATERIAL - This subject was briefly touched upon previously, and since they are so similar they will be treated together. Generally, evidence is relevant or material if it tends to prove that the matters at issue is more or less probable. In other words, it is relevant or material if it tends to either prove or disprove an allegation. An irrelevant or immaterial statement would be something such as "He is a Protestant." It would be relevant only if religion is an issue to be tried, but is irrelevant for any other purpose since it does not tend to prove anything.

NO FOUNDATION - A foundation objection is raised anytime that some evidence is presented to the court essentially out of the blue. The evidence itself may be admissible, but it would only be admitted by showing that it belongs in this trial by some facts or testimony. For example, you ask a witness to identify a document, the witness states that it is a report written by him, you offer it in evidence, the objection is no foundation. The objection is valid since no one knows, at that point, what the document says, who or what the report is about, when it was done, what it was based on. For all anyone knows it could deal with the price of cashews in Afghanistan and have nothing to do with abuse or neglect, or could state an opinion without any specific knowledge of the subject.

OPINION - Opinion evidence is permitted, but only by someone who is an expert. An expert is anyone who has knowledge of a subject greater than that of the ordinary person. An auto mechanic can be an expert and can render an opinion as to whether a car was improperly repaired. However, that same person cannot

give an opinion as to whether a person was psychotic. As to that opinion he has no more expertise than any other person and could have a great deal less.

INCOMPETENT - An objection as to incompetence is generally directed to a specific individual. The opinion of the auto mechanic on psychosis is an incompetent witness as to that issue. More generally, an incompetent witness is one who does not have the capacity or ability to see, hear or understand what transpired.

LEADING - Leading questions are those which suggest the answer that is being sought by the questioner. They are questions such as "you never hit your child, did you?" Leading questions are always permitted on cross examination, direct examination of an opposing party, usually permitted when you face a hostile witness, and sometimes permitted for a friendly witness with a bad memory or because of extreme age or youth.

NON-RESPONSIVE - This objection is used when the witness refuses to answer a question directly, or talks about an entirely different subject. An example may be an answer such as the following to the question "were you driving the car?" A. "Well my mother doesn't like me to drive since she figures that it's a lot healthier to walk. I usually walk everywhere that I go."

ARGUMENTATIVE - This objection is usually used in two different ways. It can mean that the attorney is arguing with the witness or that the attorney is giving a final argument cloaked in the form of a question. For example "But you couldn't have done that since it would be illogical and no one in his right mind would have put themselves in that position, isn't that correct?"

PREJUDICIAL - Everything that is entered into evidence is prejudicial in some fashion or another since the purpose of presenting the evidence is to prejudice the judge in your favor. However, this objection is used to cover those items of evidence that are so prejudicial that they would tend to inflame or incite the judge to such an extent as to preclude the possibility of a fair verdict. An

example may be an 8 x 10 color photograph of a very young abused child in obvious severe pain, covered with blood and the ends of several bones sticking out through the flesh.

ASKED AND ANSWERED - This objection is used whenever an attorney keeps asking the same question over and over again and keeps getting the same answer. Some duplication of questions and answers is normal and expected, particularly on cross examination. Asking that question and getting the same answer 3 or 4 times over the course of 20 or 30 minutes cross is generally acceptable, the same question and answer asked 3 or 4 times in 2 minutes is not. Nor would the same question and answer asked 10 or 20 times regardless of the length of cross.

ASSUMES FACTS NOT IN EVIDENCE - This is the kind of question that requires that there be an assumption that some fact did occur, even though that fact has never been entered in evidence. Such a question might be "when did you stop beating your spouse?" when the issue of beating one's spouse never arose prior to the question being asked. It assumes that the beating, in fact, took place. However, there are occasions when such questions must be asked as when a witness must be taken out of order for some reason. For example, an engineer may testify that because the transmission malfunctioned the car crashed, even though there had been no testimony that the transmission malfunctioned. Judges will almost always permit the evidence to enter subject to later proof that the transmission did malfunction.

COMPOUND - An objection to a question is usually to stop confusion. A compound question is one that has two parts, and effectively asks two questions, but anticipates only one answer. For example: Q. "Did you then go home and go to bed?" A. "No." In this instance what did the no apply to? Does it mean he did not go home and did not go to bed; or that he did go home, but did not go to bed; or that he did go to bed, but did not go home?

HEARSAY - This is the most complex objection, if not the most complex principle, in the entire field of law. It applies to oral statements, actions and documents, and it is riddled with 23 or 24 exceptions which permit the admission of hearsay evidence.

The original purpose of the exclusionary rule on hearsay is easy to explain. During any court trial a party has the right to cross examine any witness who testifies against him. The process of cross examination is considered to be the best way of testing the reliability and truth of the witness and his testimony. However, if the statements made out of court are admitted, and the person making those statements is unavailable for cross examination, the admitted hearsay statement lies there unchallenged and untested, and, therefore, irrefutable even though it may be a total lie. To avoid that, the hearsay exclusion was invented.

Hearsay is generally defined as an out of court statement offered to prove the truth of the matter asserted in the statement. A simple hearsay statement might be a witness during an abuse hearing who says "Mabel White told me that the parents beat their kids a lot." It is hearsay because it is a statement that was made out of court whose purpose is to prove that the parents beat the kids a lot. Mabel White is not making the statement, she isn't in the courtroom, she will not testify, she can't be cross examined nor can the statement. However, even though the statement is hearsay it is admissible if Mabel White is available to testify since she could be cross examined on the statement.

There are numerous statements that would normally qualify as hearsay, but are admissible for a variety of other reasons. For example, "My brother called me from New York and told me that it was too cold for him to bear." That statement is inadmissible if it is used to try to prove that it is cold in New York.

However, it could be admitted to prove that the brother was in New York, that the brother called him, and that the phones between here and New York were working. In each instance the statement is admissible because it does not rely on the statement of the brother, but, rather, is an independent fact determined by the witness who can be cross examined on those facts.

It may be of some aid to you to remember that a witness can only testify as to what he or she saw, heard, felt, tasted, smelled or learned. If the witness is not speaking of something that he or she perceived independently then it is probably hearsay.

It was stated earlier that hearsay can be an oral statement, action or a document. The oral statement is relatively easy and has been discussed.

An action can be hearsay if the action is intended to be a statement. For example, a witness is asked how he knew it was cold outside if he did not go out that day. The witness answers, "Well, I was looking out of my window and saw John James standing on the sidewalk. John looked up and saw me. He pulled his coat closer around him, blew on his hands and rubbed them together." The testimony is hearsay because it talks about what John James did. The testimony indicates that John James went through the actions only after he saw the witness in the window and was done to convey to the witness the fact that it was cold. The actions were a statement, the witness did not experience the cold himself, John James is not in the courtroom and cannot be cross examined. HEARSAY!!

A document can also be hearsay, particularly if its contents are being used to prove some fact. However, many writings such as medical textbooks are not hearsay as they are written by recognized experts based on experience and research, and are not directed to a particular case or fact situation. On the other hand, letters or reports directed to a specific matter or issue being litigated are hearsay. They are words or statements made in writing out of court being used to

prove the truth of their contents. The writer cannot be cross examined, nor can the document itself. However, the admission of documents is much easier even though they are hearsay because of the numerous exceptions to the hearsay rule. For example, some of the exceptions that may apply might be a public record, a business record made in the ordinary course of business, vital statistics, marriage or baptism records, church records, etc.

A word of caution is necessary at this point since some records, otherwise admissible, may be excluded because of hearsay within hearsay. For example, a police report relative to an incident is admissible since it would fall under the business records exception, i.e., the officer is required to prepare a report on every incident that he investigates. However, if the officer wrote down on the report a statement made to him by a witness, that statement is inadmissible. Reason: the report is hearsay, but is admissible because of the business record exception. That report is also a statement of what the officer perceived independently during the investigation and the officer would be able to testify to those facts if he were on the stand. The witness's statement is also hearsay, but is made to the officer. If the officer were to testify, he could not testify to that statement. Consequently, it remains inadmissible hearsay when written in the report, even though the report is admissible. The admissibility of the report does not affect the inadmissible nature of any hearsay contained in that report.

There is one other quirk that you should be aware of in the realm of hearsay. Hearsay is normally a statement made directly to a person who is testifying. If the witness testifies that he heard a person making a statement to a third person, the witness can testify to that statement even though the statement is otherwise hearsay. The difference here is that the statement was not made for the benefit of the person testifying but for some other reason and to some other person. It is admissible to show what the person making the statement believed, the fact that the statement was made, etc.

Having thoroughly confused you on hearsay and other objections, it is time to consider the procedural steps to take to get whatever facts you wish to present into evidence.

With oral evidence, the procedure is fairly simple. You have called a person to the stand to testify, the person is sworn in and sits. Your first step is to identify the person, and if appropriate, their background, experience and education or training. The next step is to get testimony as to how they first became involved in the case. You may ask whether they have had any contact with the family or some member of the family, when and in what capacity.

Having laid the background you can then ask what they observed or noted or their experience. It normally isn't wise to permit the witness to ramble on, but is best to interject with specific questions to guide and direct the witness. If the person has greater expertise in a particular field you may ask them for an opinion if it would be helpful.

Documentary or physical evidence requires a different pattern before it will be admitted. The evidence is first shown to the witness who is asked to identify it. Once identified, it is shown to opposing counsel who has three options. First, the opposing counsel may indicate there are no objections at which time the evidence is marked and accepted. Second, the opposing counsel may object for a particular reason at which time the court may hear brief arguments and make its ruling. If the objection is sustained the document is not admitted, but if overruled the evidence is marked and admitted. Third, the opposing counsel may feel that he does not have sufficient knowledge of the subject or document to make a decision and will requires permission to voir dire the witness. Voir dire is a term used, in this context, to mean an out of turn brief examination of the witness by opposing counsel on a very limited point for the purposes of clarification. If the court allows it, and as soon as it is done, the opposing counsel will then either object or not object to the entry of the evidence.

Once the evidence is marked and admitted, you then have the right to question the witness in depth as to the exhibit.

There are two things to watch for here. The first is that the marking of the exhibit may be "for ID only." That means that it is not a full exhibit and has not been accepted into evidence by the court. "For ID only" means that it was marked merely for the purposes of ready reference when talking about the exhibit. If you want that exhibit in evidence and considered, then you must always make sure that at some point before you rest that you ask the court to strike the ID. By asking that, you are telling everyone you want that document to be considered as evidence.

The second cautionary note concerns the use or handling of a report, letter or other document. Once a document is entered in evidence, you may read the document exactly as written, or you may permit the court to read it. However, you should not ask a witness to paraphrase or interpret what is said in the document. Such a step will normally lead to an objection that the document "speaks for itself." What that means is that the document and what is written in it is evidence in its entirety. It says just what is says and nothing more or less. Therefore you have no right to either add or detract from the document.

Many documents, such as doctors' or psychologists' reports will cont- ain phrases or words that are not normally used or understood by the normal perso- n. You do have every right to ask the person who wrote the report, or another in the same profession what is meant by the word or phrase. You also have the right to take particular words, phrases, sentences or paragraphs out of the document and ask the witness what is meant by it, or for further explanation, or for any other questions relevant to the matter.

The State of New Hampshire has recently codified the evidentiary rules used in its courts. Those rules, with some background and explanation can be obtained in

pamphlet form. At least one such pamphlet can be found in every district office in the state.

The New Hampshire Bar Association has prepared a 4 page pamphlet, (see following pages) that contains a very brief listing of the rules of evidence, steps in handling exhibits and a list of trial objections. This listing is a handy reference, but is not, and should not, be used as an alternative to the formal evidentiary handbook. Further, when you look through the list of trial objections, you will note that it is very long with a great number of objections. Don't worry overly about those objections as the use of the vast majority is exceedingly rare.

New Hampshire Rules of Evidence

At a Glance

Rule

100 These Rules govern all cases, the trial of which commences on or after July 1, 1985, to the extent that they are not inconsistent with existing statutory law.

101 These Rules govern proceedings in the courts of the State of New Hampshire.

102 Their purposes are fairness and avoidance of expense or delay.

103 Reversal is possible only if an objection or offer-of-proof is made. Exceptions are not necessary.

104 Judge decides admissibility issues: confessions are heard without a jury in the first instance.

105 Evidence may be received for a limited purpose.

106 If fairness requires, upon offer of a writing or recording, the offering party may be required to offer at the time related parts thereof or related exhibits.

201 Judicial notice: (I) Fact, known in the territorial jurisdiction of the Court or capable of ready determination from sources whose accuracy cannot reasonably be questioned; (a) Noticed fact conclusive only in civil actions; (II) Law, decisional, constitutional, and public statutory law; rules of court; regulations of governmental agencies and ordinances of U. S. or any state: (III) Notice mandatory if information supplied, but may be granted by court on its own; (a) Opponent of notice should be heard; (b) notice is taken at any stage.

301 Presumptions apply only to the burden of going forward and do not shift the burden of proof.

401 Relevant evidence: makes a fact of consequence to the case more or less probable.

402 Irrelevant evidence is inadmissible.

403 Relevant evidence may be excluded if outweighed by prejudice, delay, confusion, or repetition.

404 Character is not admissible to prove an act unless first offered by an accused (via a witness), but may be admissible for other purposes. (See 607, 608, 609)

405 Character is proved by reputation or opinion: specific acts only on cross or when in issue.

406 Habit (routine), whether or not corroborated, is admissible to prove conduct.

407 Subsequent repairs are inadmissible on liability (allowed re ownership, control, feasibility).

408 All statements in settlement discussions are inadmissible (except to explain delay or show bias). Release or settlement with joint tortfeasor inadmissible.

409 Payment of medical expenses is not admissible to prove liability.

410 Offers of pleas and their withdrawal are not admissible.

411 Insurance is inadmissible on liability or extent of damage (allowed re ownership, control, agency, or bias).

412 Prior consensual sexual activity of victim and person other than defendant inadmissible, except as constitutionally required.

501 No privileges, except as provided by constitution, statute, or Supreme Court rule.

502 Lawyer-client privilege may be claimed by client, to prevent any other person from disclosing confidential communications made to facilitate rendering legal services; attorney may assert privilege on behalf of client.

503 Patient privilege as to confidential communications with physician, surgeon, psychologist, or pastoral counselor; may be asserted by provider of care on behalf of patient.

504 Husband-wife privilege as to statements made in marital confidence; statements violating marital confidence may not be admitted.

505 Priest, rabbi, minister, Christian Science practitioner privilege as to statements made to them in confidence in capacity as spiritual adviser.

506 Reserved

507 Trade secret privilege, unless it conceals fraud or works injustice.

508 Reserved

509 Governmental privilege not to disclose identity of informer, except as justice may require, and subject to possible dismissal or other appropriate relief.

510 Voluntary disclosure of privileged information by holder of privilege waives privilege, unless disclosure was privileged.

511 Inadvertent or improperly compelled disclosure of privileged information still privileged.

512 Claim of privilege may not be commented upon, although cautionary instruction shall be given if requested.

601 A witness is competent unless the Rules disqualify.

602 Personal knowledge is required of all witnesses (perception, recall, and ability to communicate).

603 Oath or affirmation is required of every witness.
604 Interpreters must be qualified as expert and work under oath.
605 Reserved
606 A juror may not testify, but may be questioned after verdict, in the discretion of the court, to ascertain whether the case has been properly tried.
607 Any witness's credibility may be impeached by any party (e.g., for bias, prior statements).
608 Credibility is attacked by opinion or reputation for truthfulness, not specific acts other than crimes (Rule 609), unless on cross-examination the court permits in its discretion. (See 404)
609 Unpardoned adult convictions are usable to impeach if involved dishonesty, or if felonies and the probative value outweighs prejudice in use if less than 10 years old (or older if, upon notice and hearing, the Court finds it fair to permit their use).
610 Religious beliefs may not be used to impeach.
611 (a) The Court controls examination to find truth, avoid delay, and protect witness; (b) Scope of cross is not limited to direct, unless the Court so limits in the interest of justice; (c) Leading is allowed on direct if necessary, on cross, and with witnesses who are hostile or adverse (identified with a party).
612 Writings used to refresh witness during testimony must be produced to the adversary; writings used before testifying may be produced in the discretion of the court.
613 (a) Prior statements need not be first disclosed to witness in impeachment; (b) Extrinsic proof of prior statements is permitted only if the witness is first given an opportunity to explain.
614 The Court may not ordinarily interrogate a witness, and must remain impartial.
615 Exclusion of witnesses shall be allowed in criminal cases, and may be allowed in civil cases; does not authorize exclusion of parties or their representatives, or persons whose presence is essential, or the victim of the alleged crime.
701 Lay opinion is admissible if rationally based on perceptions and helpful to the trier of fact.
702 Expert opinion is allowed if it assists trier of fact. (Witness must qualify, speak with reasonable certainty.)
703 Expert opinion may be based on known, admissible facts or any fact typically relied on in the field.
704 Opinion on the ultimate issue is admissible if otherwise proper.
705 Facts underlying expert opinion need not be presented on direct; cross-examiner may inquire.
706 Reserved
801 Hearsay "is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Statements include acts only if intended as statements (e.g., raising a hand, nodding the head). Prior statements of the witness, then under oath and now cross-examined are not hearsay. Admissions of a party, including the co-conspirators or agents (if made during and relating to the agent's employment), and admissions adopted by a party, are not hearsay.
802 Hearsay is inadmissible absent an "exception" or a Supreme Court Rule pursuant to statutes.
803 Exceptions to the Hearsay Rule, Availability of the Declarant Immaterial:
(1) Present Sense Impression (e.g., "Look, it's dark outside").
(2) Excited Utterance, by anyone, "relating to" a "startling event or condition" and before excitement fades.
(3) Present Mental State or Physical Condition (e.g., "My knee hurts"; "I intend to do so") but, except for wills, not memory or belief to prove matter asserted.
(4) Statements for Medical Treatment (only those pertinent to diagnosis or treatment and only if trustworthy in court's discretion).
(5) Recollection Recorded. (If the witness knew the facts once, recorded them when fresh in mind, and presently has exhausted recollection, the memorandum may be read in evidence and received as an exhibit unless prejudicial or cumulative.)
(6) Business Records (and others regularly kept): Testimony by custodian or other qualified witness, showing a regular practice to keep such records and that the exhibit was made in the ordinary course of the enterprise (and relates thereto). record may be admitted.
(7) Absence of Entry in Business Records (and other records regularly kept) to prove nonoccurrence, nonexistence.
(8) Public Records or Reports (federal or other agency: activity, observations, evaluations).
(9) Records of Vital Statistics (e.g., births, marriages).
(10) Absence of Public Records Entry.
(11) Records of Religious Organization. (Informant need not be an officer thereof.)
(12) Marriage, Baptismal Certificates.
(13) Family Records (e.g., Bibles, genealogies, tombstones).
(14) Documents relating to Property Interests.
(15) Statements in Rule 803(14) Documents.
(16) Statements in Ancient Documents (20 years or older; document must be authenticated).
(17) Market Reports, Commercial Lists (of types relied upon by public or professionals).
(18) Learned Treatises (relied on in direct or called to an expert's attention on cross). If shown by testimony or judicial notice to be reliable authority, may be read into the record, but may not become an exhibit unless court finds probative value outweighs prejudice.
(19) Reputation re "personal and family history."
(20) Reputation re Boundaries or Historical Matters.
(21) Character Reputation.
(22) Reserved.
(23) Judgments re Boundaries or Family History.

Other exceptions where circumstantial guarantees of trustworthiness exist, (a) if the statement goes to a material fact, (b) is more probative than other evidence, (c) it serves justice to admit.

804 Exceptions only applicable when declarant is unavailable (i.e., exempted by privilege, refuses despite order, shows lack of memory, cannot attend due to death or illness, or is absent despite an attempt to subpoena).
- (1) Former Testimony (where predecessor in interest had opportunity and motive to cross-examine).
- (2) Dying Declarations, if believed death imminent (used only in homicide and civil cases).
- (3) Statements Against Interest (pecuniary, penal, or proprietary).
- (4) Statement re Personal or Family History.
- (5) Other exceptions where circumstantial guarantees of trustworthiness exist, (a) if the statement goes to a material fact, (b) is more probative than other evidence, (c) it serves justice to admit, and the adversary was warned before trial.

805 Hearsay within hearsay is barred unless covered by an exception.

806 Credibility of the hearsay declarant may be attacked, then supported.

901 Authentication requires a showing that the matter in question is what its proponent claims.

902 Self-authenticating documents:
- (1) Domestic public documents under seal,
- (2) Certified copies of unsealed domestic public documents,
- (3) Foreign public documents signed and certified to the level of the U.S. consul,
- (4) Certified copies of public records,
- (5) Official publications,
- (6) Newspapers and periodicals,
- (7) Trade inscriptions (tags, labels),
- (8) Documents with acknowledgment certificates,
- (9) Commercial paper,
- (10) Matters declared presumptively authentic by statute.

903 Signer need not testify unless statute requires.

1001 Originals include counterparts and prints from negatives; "duplicates" are identical copies.

1002 Original writing, recording, or photograph must be used to prove its contents, except:

1003 Duplicates are admissible unless (a) a genuine question of authenticity exists, or (b) use of the duplicate would be unfair.

1004 Evidence of the contents of an "original" is permitted if (a) the original is lost without bad faith, (b) the original is unobtainable, (c) an opponent will not produce the original, or (d) the writing, recording, or photograph relates only to collateral matters.

1005 Public records must be proved by copy unless unobtainable despite due diligence.

1006 Summaries of voluminous records are permitted for convenience; originals must be reasonably available for review.

1007 Contents of "originals" may always be proved by a party's testimony or written admissions.

1008 The trier of fact decides (a) if the original ever existed, (b) whether an exhibit is an original, and (c) whether evidence of its contents reflects the contents.

Exhibit Handling Steps:

Hand the exhibit to the witness (dictating for the record what you are doing).
Ask whether the witness recognizes the exhibit (describe it by exhibit number only).
Ask what the exhibit is.
Lay the foundation for its admission: Authenticity (Is it what it purports to be?); Relevance (What fact of consequence to this case does it bear upon?)
Show the exhibit to opposing counsel.
Offer the exhibit into evidence. (Opponent is permitted voir dire at this point.)
Obtain a ruling from the court on your offer.
Have the exhibit marked.
Show or read the exhibit to the trier of fact.
Record in your trial notebook the date and time of receipt into evidence.
Before resting move to strike identification limitation from exhibits to be considered by trier of fact.

In cases where exhibits are exchanged before trial and pre-marked, a different procedure is followed.

Trial Objections
At a Glance

Objections to Opening Statements
- Addressing Juror by Name
- Anticipating Defenses of Adversary
- Arguing the Case
- Disparaging Comments
- Fact Stated Will Not Be Proven
- Inadmissible Matter Injected
- Instructing Jurors on the Law
- Insurance Overly Stressed
- Misstates the Law
- Personal Belief in Merits Expressed
- Prejudicial or Inflammatory
- Settlement Discussions Mentioned
- Subsequent Repairs Injected
- Wealth or Poverty of Party Mentioned

Objections to Competency of Witnesses
- Attorney Called as Witness
- Deadman's Statute Bars Testimony
- Inability to Observe, Remember, and Communicate
- Inability to Understand Duty to Tell the Truth
- Judge or Juror Called as Witness
- Personal Knowledge Lacking

Objections on Privilege and Related Grounds
- Attorney-Client
- Clergyman-Penitent
- Defendant in Criminal Case
- Identity of Informer
- Marital Communications
- Newsman's Immunity
- Official Information
- Physician-Patient
- Psychotherapist-Patient
- Self-Incrimination
- Trade Secrets
- Voter Information
- Work Product

Objections to Conduct of a Witness
- Argumentative Answers
- Clothing Objectionable
- Communication with a Juror
- Disparaging Comments
- Display of Unadmitted Exhibit to Jury
- Fee Contingent on Answers
- Inaudible Answers
- Interruption of Questions
- Looking to Counsel for Answer Cue
- Narrative Answers
- Notes Being Used without Permission
- Prejudicial or Inflammatory Statements
- Protracted Answers
- Refusal to Answer Precise Question
- Unavailability for Cross-Examination
- Unresponsive Answers

Objections to Conduct of Counsel
- Bickering
- Blocking View of Counsel, Judge, or Jury
- Candor or Fairness Lacking
- Clothing Objectionable
- Coaching Comments in Question or Objection
- Communication with a Represented Party
- Communication with a Juror
- Currying Jury Favor
- Custom or Courtesy of Practice Ignored
- Cutting Off Witness's Answers
- Deceit or Collusion
- Delay of Suit
- Dilatory Tactics
- Display of Unadmitted Exhibit to Jury
- Disparagement of Counsel, Party, or Witness
- Distracting Noise or Movement
- Ex Parte Communications with Court
- Facts not Proved or Provable Stated
- Failure to Follow Court Instructions
- Gestures or Signals to Witness or Jury
- Habitual or Intentional Violation of Rules
- Hostility to Court, Counsel, Party, or Witness
- Inadmissible Matter Sought or Stated
- Insurance Injected
- Interruption of Questions of Adversary
- Interviewing Potential Jurors
- Irrelevant Matter Injected
- Lateness
- Location of Counsel while Questioning
- Misquoting Testimony or Exhibit
- Objecting for Improper Purposes
- Orderly Trial Subverted
- Payment of Witness Fee Contingent on Testimony
- Personal Belief in Merit or Credibility Conveyed
- Personal Knowledge Asserted
- Personal Influence Exerted on Judge or Juror
- Prejudicial or Inflammatory Matter Raised
- Pretrial Order Violated
- Protracted Examination
- Publicity Violations
- Religious Beliefs Injected
- Repeating Objectionable Questions
- Respect for Court Lacking
- Stipulation Violated
- Subornation of Perjury
- Suppression of Evidence
- Testimony by Counsel
- Undignified Conduct

Objections to Conduct of the Judge
- Bias re Counsel or a Party
- Coercion
- Credibility of Witnesses Assessed
- Disparagement of Counsel or a Party
- Disparagement of a Witness or Testimony
- Excessive Examination of Witnesses
- Gestures or Facial Expressions
- Interference with Presentation of Case
- Merits of Case Evaluated for Jury
- Mistakes (and Misconduct)
- Off-the-Record Comments
- Prejudicial Statements
- Settlement Pressure Inordinate
- Summarization of Testimony

Objections to the Form of a Question
- Ambiguous
- Argumentative
- Asked and Answered
- Assumes a Fact Not in Evidence
- Compound
- Confusing or Unintelligible
- Hypothetical Question Misused
- Leading
- Misquotes a Witness or Exhibit
- Narrative Answer Requested
- Overly Broad or General

Objections to Testimony and Exhibits
- Accrediting Barred before Impeachment
- Authentication Lacking
- Best Evidence Rule Violated
- Collateral Matter
- Conclusion Improperly Elicited
- Corpus Delicti Not Proven
- Cumulative
- Deadman's Statute Violated
- Excludable in Court's Discretion
- Fact Barred by Pleading or Admission
- Foundation Defective
- Hearsay
- Illegally Obtained Evidence
- Immaterial
- Impeachment Improperly Handled
- Incompetent
- Insurance Improperly Handled
- Irrelevant
- Mental Operations of Nonwitness Sought
- Narrative Answer
- Nonresponsive Answer
- Objectionable on Other Grounds
- Opinion Offered without Basis
- Parol Evidence Rule Violated
- Prejudicial or Inflammatory
- Pretrial Order Obviates Testimony
- Privileged or Protected Information
- Reading from Document Not in Evidence
- Rehabilitation Improperly Handled
- Scope of Proper Examination Exceeded
- Self-Serving (Usually Hearsay)
- Settlement Discussions Disclosed
- Speaks for Itself (Exhibit)
- Speculation Inadmissible
- Stipulation or Agreement Obviates Answer
- Subsequent Repairs Inadmissible
- Testimony by Counsel
- Undefined Term Employed
- Undisclosed Document Barred
- Wealth or Poverty of Party Injected

CHAPTER XIII

Witnesses

In every case that you try, the most important element will always be the witnesses that are called by either side. Consequently, the way that the witnesses are handled, or mishandled, will determine the outcome of the case.

The purposes and uses of the witnesses are to bring out the facts and evidence that you want to make your case. The only way to do that is to ask the right questions and to elicit the right answers. And the only way to do that is to interview the witnesses before the time of trial.

After having conducted your investigation, you will know what the facts are and who can testify to which facts. However, during the course of the investigation, you have been concentrating on the issue of abuse or neglect. Now is the time to concentrate on the witness to determine who they are, what their backgrounds are, what prejudices they may have, how good or bad they may be on the stand, how definite their statements or testimony will be, and what weaknesses they may have. It is not uncommon to have a witness that you believe will be strongly in your favor, essentially sabotage your case out of strong desire to be fair to everyone, and, perhaps, not to want to harm someone or hurt their feelings. If that is, or will be, the case, you'd best be aware of it before the trial, and be prepared to handle it at trial.

If possible, the best approach is to meet with each person whom you intend to call as a witness sometime before the trial. With each person, take the time to advise them with the date, time and place of the hearing, the purpose of the hearing, where they fit in and what they can expect when they testify. Warn them that the process is time consuming, and that they may spend a lot of time sitting around and waiting.

Almost inevitable, they will complain, give various reasons why they would prefer not to appear and may even refuse to attend. It is your responsibility to

convince them of the need to do so, and, if necessary, to advise them that they will be subpoenaed. In fact, it is best for virtually everyone if you indicate that they will receive a subpoena in order that they can be paid a witness fee.

During the interview, test their recollection of events, go over with them their testimony and their reports, if any, and do some gentle cross examination to ensure that they'll remain consistent. Do not put words in their mouths or ask them to testify to something they did not observe themselves. Always make notes not only of their testimony, but also of their appearance and what you think they'll be like in court. Try to anticipate and discuss any problems you may foresee. Resolve any discrepancies before you get in the courtroom.

By the time you get into the courtroom, you should have your game plan set. You should know who all of your witnesses are, the order in which they will be called, what they will testify to and what evidence they will introduce. From here on out you should be little more than a director in a play letting your witnesses lay out the story for the court.

As the petitioner, you will start the case and call your witnesses first. You will probably be your first witness and will lay the foundation for all of the other evidence that is to come. Building a case on direct examination is very much like building a house. It must be done fact by fact, each adding to the entire case until it is completely laid out for the court.

The process of building your case in this manner is not very exciting, and is often quite tedious and boring. However, there is no other or better way of doing it. Do not attempt to speed up the process or to take shortcuts. Anything that you miss will ultimately cause the case to come tumbling down around your ears. Do not expect the court to make a leap of faith or imagination from one fact to another. Cover every step from the 1st fact to the 2nd so that there can be no question that they are directly connected. Make sure that every fact tends to prove some element of the allegations made in your petition.

All of this is done through the careful and complete direct examination of your witnesses.

The direct examination of every witness can be separated into 3 or 4 basic parts; first, the identification of the witness, second, the background of the witness, third, the observations of the witness relative to this case (the evidentiary phase) and fourth, conclusions or opinion, if the witness is an expert.

In every instance, and throughout the entire course of the direct examination, the questions must always be asked the same way. The questions must be neutral. They cannot be leading and they cannot be suggestive. They must flow in a logical and understandable sequence.

The identification portion of the direct is to identify fully the person who is testifying. This is required so that the opposing party knows who the person is and what connection he or she has to the matter. The questions are simple:

- "Please state your name and address",
- "Please state where and by whom you are employed",
- "How long have you been so employed?",
- "Were you so employed at the time of the incident?"

The background phase is to provide the court with the witness's background, and for a professional such as a doctor, the person's education and training leading to his or her expertise.

For a non-professional, the questions may be something like the following:

- "How long have you lived at that address?",
- "Are the parties neighbors of yours?",
- "How long have they been your neighbors?",
- "Do you know them personally?",
- "How long have you known them?"

For a professional, the questions are different, but still serve the same purposes. For example:

- "What is your profession?",
- "Where do you practice?",
- "How long have you been in the profession?",
- "Do you have a specialty?",
- "What is your specialty?",
- "Please tell us your educational background",
- "Have you had any further training",
- "Are you a member of any professional societies or associations?",
- "Have you held any offices in any of these societies or associations?".

Once the identification and background of the witness has been laid out, everyone knows who they are and what the direction their testimony will take which permits you to get into the evidentiary phase, what they saw, heard, or know.

The first two phases are the easy part that normally draws no objection. However, the evidentiary phase is where the battles take place and where any cross examination will take place. The questions here must be carefully crafted and asked. The process here must be slow and painstaking. The questions are to get the person to tell what he or she knows of the situation.

For the non-professional the questions may be as follows:

- "During the years that you've been a neighbor, have you observed, or come to know the children?",
- "How often have you seen them?",
- "Have you seen them with their parents?",
- "How have they been treated by their parents?",
- "Can you give us some examples of the treatment you've seen?",
- "Can you give us some idea of when that may have occurred?",

- "Have you observed the way that the children were dressed?",
- "Were the clothes they were wearing appropriate for the weather conditions?",
- "Why were they inappropriate?".

For a professional:

- "Did you have occasion to see any of the children?",
- "On what date or dates did you see the children?",
- "Did you see them in your professional capacity?",
- "Was it for the purpose of treating the children?",
- "What were they treated for on that occasion?",
- "Did you examine them at that time?",
- "What were the results of that examination?",
- "In your opinion, what caused that particular condition?",
- "In your opinion, could the condition have resulted from any other factors such as an accident?",
- "Why not?".

Much of what is asked during this phase, if asked in the manner outlined above, will get through without objection, because each question builds on the preceding one. If the first question is not objectionable, then, normally, none of the others will be.

The opinions that were sought from the professional are unobjectionable since the professional has knowledge beyond that of the ordinary person, and his knowledge puts him in a position to make those judgments. However, you will also note that there were some opinions asked for, and stated, by the non-professional witness. These questions and answers may be objected to but are not normally objectionable since they are of a type where common human experience and understanding come into play. In other words, an opinion can be given by any

person on a subject where every ordinary person has some experience. For example: virtually everyone has been drunk at some point, or has dealt with a drunk. Consequently, we are all in a position to give our opinion as to whether or not a person appeared drunk, but not necessarily if he was drunk. Similarly, we have all been cold and know how we must dress to stay warm. Consequently, we are all able to give an opinion of whether or not a child was inappropriately dressed for the cold weather.

The final phase of questioning is the opinion phase. This phase is restricted exclusively to professionals because it asks them to give an opinion on the ultimate issue before the court, i.e., did the abuse or neglect occur. The questions are usually limited and may be as follows:

- "Doctor, based on your examination and contacts with this family, do you have any opinion on how the child was treated?",
- "In your opinion, could it have been caused by any other factor than abuse or neglect?",
- "Do you have any opinion on whether such conduct may continue?",
- "What is your opinion?",
- "Do you have any opinion on how the child may be affected if such conduct continues?",
- "What is that opinion?".

Once you've reached this point with a professional, or at the end of the previous phase with an ordinary witness, you've accomplished everything that you can. STOP at this point and don't ask any further questions.

That last warning may seem unnecessary, however, all too often you will see someone who wants to drive the point home one more time, ask the question in a slightly different way and gets an entirely different and unexpected answer. That answer may, at the least, cause a lot of confusion and dilute the power of the

previous testimony, or could be the opening needed by opposing counsel to unravel the entire testimony on cross. WHEN YOU'RE FINISHED, STOP.

Many people, in preparing for direct examination, will prepare a list of questions to ask, will ask those questions, anticipate the answer and will then ask the next question. All too often in the process they will forget to listen to the answers and will miss innumerable opportunities and drive a point home by following up on something that may have been said. However, there is nothing wrong with such a list if it is used as a guide for the areas to be covered rather than a script. You can rest assured that if you are trying to use it as a script, and at the same time you are listening and reacting to the testimony, your script will be useless in no time flat.

Once your direct examination is completed, the opposing attorney has the opportunity to cross examine. Pay attention. Make sure that you hear and understand each and every question and answer. Once the cross-examination is completed, you will have an opportunity for re-direct.

The purpose of the re-direct is to correct any wrong impressions created on cross, to strengthen any weakened testimony, and to re-stress any important testimony lost in the shuffle. However, the re-direct must be limited to the areas addressed on cross only and should not bring up new testimony unless called for by the cross. Do not bring up on re-direct something that you forgot on direct that was not addressed on cross. You can't do it.

When you are considering going into re-direct, your first question to yourself is whether you need it. The mere fact that there was cross examine does not automatically mean that there is re-direct. If the cross did no harm to the direct testimony, caused no confusion and required no clarification or strengthening then do not re-direct.

On the other hand, if damage of some type is done, or if the cross has been very long, then you should re-direct. However, in these cases re-direct only those areas where you perceive the damage or the confusion. And then limit your re-direct to as little as you must ask to re-make the point. Once you've accomplished the purpose, stop and sit down.

In the fullness of time, you can expect that you will have presented all of your witnesses and evidence. Each witness will be treated in the same manner, asking the same types of questions, and they will face the same cross and re-direct. Finally, you will be done and you will rest.

At this point, you and opposing counsel will change positions. Now, he or she will be responsible for presenting the direct evidence and you will be responsible for doing the cross examination.

Cross examination is an art. It is flashy, exciting and dramatic. It is also dangerous and deadly, full of booby-traps and pitfalls for the unwary. If done right it can drastically limit the effectiveness of the opposition's case, and in a few very rare instances it can destroy it. If done wrong it can help the opposition make their case and can blow your socks off.

There is no really good way to tell you how to conduct an effective cross examination of a witness. Volume on volume has been written on the subject, the glory and the dangers. And there are almost as many ideas on the subject as there are lawyers. Perhaps the only thing that everyone does agree upon is that the only way to become effective is through experience. In other words, as in almost everything else, the more practice you get the better you get.

Of course, none of that helps you figure out how to do a cross examination, so the following 10 commandments on the art of cross examination have been stolen from Professor Irving Younger who is generally recognized as the present day's leading expert on the subject.

IRVING YOUNGER'S 10 COMMANDMENTS ON CROSS EXAMINATION

I. Be brief
II. Short questions, plain words
III. Ask only leading questions
IV. Never ask a question to which you do not already know the answer
V. Listen to the answer
VI. Do not quarrel with the witness
VII. Do not permit the witness to explain
VIII. Do not ask the witness to repeat the testimony he gave on direct examination
IX. Do not ask one question too many
X. Save the explanation for summation.

Every one of these commandments have a hallowed place in the legal profession, and, hopefully, even a brief explanation of each will show you why.

1. Be Brief: Judges are pressured by large dockets, and bored by unbelievable repetition. They hear the same testimony and excuses day after day, case after case. There is little that you will ever present that will either shock or surprise a judge with some experience on the bench. Furthermore, having the experience, it is not necessary to beat him over the head with a fact before he gets the point. By being brief, you are ensuring that he is hearing everything rather than nodding off while you dither on one minor point, thereby missing the full effect of the next point made.

   Just as important, the less time you spend on cross, the less chance you have of making a mistake and getting hurt by the witness.

2. Short Questions, Plain Words: Being professionals, you, like all other professionals in all other professions, have developed certain terms that you understand perfectly, but which are a mystery to everyone else. If you use those words, the instant the judge, and anyone else who hears them, will stop listening to you and will chew on that word for a while trying to figure out

what you said. That word-stop may well cost you the impact of the point you were making and the entire train of thought you were building.

Precisely the same effect is caused by long, convoluted questions. By the time the last part of the question is asked, the first part is forgotten, or the last part is never heard because every is trying to make sure that they understood the first part. Inevitable, someone will say they didn't understand the question and will ask you to repeat it, something you could probably never do. No matter what happens, everyone's concentration is broken and your entire thrust may be missed.

There is an acronym sometimes used by attorneys to help control themselves; K.I.S.S. "Keep it simple, stupid!"

3. Ask Only Leading Questions: It was previously stated that leading questions are always permitted on cross examination. Leading questions were also defined as being questions that suggest the answer sought by the question or questioner. That is a nice way of putting it when in reality, on cross examination you are trying to stuff the answers into the witness's mouth, and get him to say just what you want to hear and nothing else. Not only do leading questions permit you to do that, but they also permit you to control the witness. They permit you to stop him from saying what he wants to while you lead him down the primrose path to never never land. Always, to the extent possible, get the witness to give you a straight "Yes", "No", or "I don't know" answer. If you are getting more than that you're not leading enough. Generally, you should end every question with a phrase such as "isn't that correct", "isn't that true", etc.

4. Never Ask A Question To Which You Do Not Already Know The Answer: It sounds so easy and so reasonable, yet it is violated continually, almost always leaving the blood-splattered remains of the questioner on the floor.

Almost every witness will, at some point, say something that makes you curious to find out why they say that. The answer is a teaser, it is bait for the unwary, it is the snake's apple which, if bitten, will not only strip you of your innocence, but will do so in the worst possible way.

Whenever you are curious, it means that you do not know what is behind the answer you just heard and cannot possibly know what the answer to the next question will be. DON'T ASK IT!

If you do ask it, almost invariably, the answer will be the one key statement that will put everything else the person said in perfect logical perspective, and make him completely immune to any further questioning. At the very least it will give the person the perfect opportunity to explain away any inconsistency in his prior testimony.

5. Listen To The Answer: This rule was previously laid out in the discussion on direct examination, but is even more important here. If you are not listening to the answer, you will miss either the golden opportunity to nail the case shut, or the thrust of the stake that just went through your heart.

   People say incredible things on the stand because they are under pressure, in a strange environment, and, usually, can't think clearly. Many times they will disclose things that they would never have said in other circumstances. But once said, they will do their best to cover it up or explain it away. If you're not listening, you'll miss it and they will be successful in the coverup.

6. Do Not Quarrel With The Witnesses: Two reasons for this rule. First, it looks terrible and will draw an immediate objection. Second, and far more important, it gives the witness the opportunity to wriggle off the hook after making a total fool of himself.

Imagine a witness who just said something absurd. Imagine yourself asking "Do you expect the court to believe that?" Now imagine the witness answering "Of course not, you got me confused, what I really meant to say was..." Now imagine further you're not asking that question and the absurdity hanging in the air, unchanged and unexplained for all to absorb. Imagine further the sound of the witness's credibility being flushed down the tubes.

7. Do Not Permit The Witness To Explain: Look back to 3. What you're trying to do is to get a series of answers from the witness that leads him, and everyone else, to the conclusion you want them to draw. So long as he keeps answering your questions, your way, you succeed. But, the minute he breaks away from your line and begins to explain, the careful chain you are forging develops weak links. The less that the witness says other than yes or no in answer to your questions, the surer you are of getting the result you want during the cross examination.

8. Do Not Ask The Witness To Repeat The Testimony He Gave On Direct Examination: Again, the reasoning behind this rule is simple. If the witness's statement was damaging to you on direct examination, you want to minimize the damage. You certainly won't do that if you permit the witness to repeat the story a second or third time. Remember also that the more often something is said, the more believable and acceptable it becomes. Don't help the witness cut your throat, don't ask him to repeat his testimony.

9. Do Not Ask One Question Too Many: This again is a warning sounded earlier when discussing direct examination. Again, it is more valid and important there than in the direct examination. Remember that what you are trying to do is to lead the witness down your path leading to the conclusion that you want. In many instances, that path is a lot shorter than you anticipated, or

an unexpected witness statement may get you there far sooner than you had hoped. In either instance, once you get there, stop. There are innumerable cases in the law books which show the devastating effect of one question too many. That last question is almost always unnecessary. The other questions that you asked to that point will have set the tone that you want and will have left the impression you want. That last question will inevitably be the one which elicits the answer that explains everything and firmly closes the nice gap you had created to that point.

Once you achieve your effect, STOP.

10. Save The Explanation For Summation: This commandment is most often particularly directed to juries and jury trials but can work just as well with a judge. Again, the error made here is one of attempting to stress some significant point several times and in several ways to make sure that the judge hasn't missed it. Unfortunately, in doing so you are giving the witness more time and more opportunities to correct the impression you're making. To avoid it is simple. All you need do is create the impression and stop. Then, when you make your closing argument to the court, you can stress it to your heart's content, and the impression cannot be corrected or disputed by the witness since he is no longer on the stand and can say nothing. In essence, you get an extra free shot at the witness's testimony without risk.

If you read the commandments and the explanations through again you'll note that there is a great deal of similarity in the reasons given. But that does not mean that there are too many commandments and that they can be reduced. What it does mean is that there are a lot of different directions from which you can get smacked by the same baseball bat. Learn, remember and follow these commandments, and your life in court will be much more pleasant.

As with any other rule or set of rules, these too are made to be broken. They have been on many occasions by many attorneys. However, the ones who have done so successfully are the names such as Clarence Darrow, Abraham Lincoln, F. Lee Bailey, Louis Nizer, etc. The ones who have done so unsuccessfully are just about everyone else who has practiced law and who you will never hear of.

That does not mean that you cannot, and if you do it long enough, you will not successfully violate the rules. It just means that the vast majority of the time you'll get caught. There are no good generalizations, but one example may be a witness who makes such an outrageous statement on direct that you can ask him to repeat that statement again on cross. If he does repeat it and it is still just as outrageous, you can sit down without asking any further questions, fairly well satisfied that you have conducted an effective cross. But remember, he may not repeat it, he may change it, or he may explain it and you're the one with the problem.

Thus far the subject of cross examination has been looked at from the perspective of what you should or shouldn't do when you are the one asking the questions. But even knowing the 10 commandments does not always help when you are the one being cross examined when you testify. The guidelines in that instance are both similar in some respects, but different in others

First, keep your cool. The opposing attorney will do everything in his power to fluster you and to catch you off guard. You are a professional; stay professional on the stand.

Second, listen to the question. There is nothing worse than to have a witness answer a question that wasn't asked. Often, the answer is just close and just bad enough that the attorney will not try to correct it. If you didn't hear the question fully, or you didn't understand the question, or it's too long or too involved, then ask to have it repeated or clarified. That simple step serves a

variety of purposes, it ensures that you have heard correctly and will answer properly, it gives you additional time to think, it gives you an opportunity to frame your answer, and it disrupts the opposing attorney's rhythm.

Every attorney, on cross, attempts to set a rhythm of question and answer. If done properly it can become almost hypnotic. Any disruption of that rhythm makes it more difficult for the attorney to attain his purposes.

Third, answer as simply, completely and as briefly as possible. Don't use terms of art if you can avoid them. Don't ramble on. Say what you have to say and stop. The less you say, and the simpler it is, the less the attorney will have to grab onto and twist around. But always make sure that your answer is a full answer to the question asked. Don't leave openings for additional questions if you can avoid it.

Fourth, be candid. If you don't know something say so. It may not look that well, but it looks a lot better than having your entire testimony ripped to shreds simply because you've tried to cover up a mistake. If you've made a mistake, admit it. You're not the first, you won't be the last. It is far easier to forgive a mistake than to accept a coverup. Besides, your admission of a mistake makes everything else you say that much more credible.

Fifth, stay consistent. So long as your testimony remains consistent, it cannot readily be impeached. To be impeached, all of the testimony has to be shown to be faulty and unreliable if it is all consistent, and that's almost impossible. If you are inconsistent, chunks of your testimony can be discarded, but, unfortunately, you have no control over which chunks. At the same time, it must also be logical in terms of common human understanding. People will automatically discard any testimony that is illogical.

Sixth, Don't volunteer. Answer the question asked, and only the question asked. Anything that you volunteer may will give the opposing attorney another shot at you and an opportunity to distort what you've said. Further, wait for a question before speaking. People hate silence, particularly in a courtroom. All too often if an attorney is silent, the witness, assuming something more is desired will say something, anything, just to fill the silence, and that something is often their undoing.

Seventh, don't argue. Give your answer, and let it speak for itself. The attorney will attempt to disparage you or your testimony, which is his job. If you try to defend by arguing, you may well end up saying something you'll regret. Besides, if you don't argue, the attorney will eventually begin to look silly.

Finally, always be prepared to say BUT. Remember that the art of cross examination is the attempt to lead a witness to a particular conclusion through the use of a series of yes or no answers. Any one of those yesses or noes by itself is essentially harmless, but, when strung together they can be devastating. Usually, the questions are framed to get a yes or no answer. And usually you will be willing to comply since the answers are clearly yes or no. However, there will almost always be one or two in the string that are not exactly a yes or no. Nevertheless, the tendency is to simply say yes or no. Avoid that tendency like the plague.

Give the yes and no answers where they belong, but when you get to one of the not exactlys, the answer you should always give is "Yes, but..." or "No, but..." That gives you the opening to permit you to explain your answer fully. And every explained answer precludes the questioner from getting what he's after. As soon as you say the but, continue with your explanation. Some lawyers will try to cut you off, but the judge will rarely let him do it.

Remember always, you have the right to give a full answer, and the But will be your salvation.

CHAPTER XIV

Motions

In virtually every case that you will ever handle, there will always be a need to file motions. Motions are the way in which the court is alerted to a particular situation that must be addressed. They can be used for any purpose you desire, and can be filed almost anytime.

Every motion must contain certain minimum format and information to be accepted and acted on by the court.

1. At the very top it must contain the phrase "State of New Hampshire."
2. Below that and on the left the county in which the court sits is typed.
3. On the same level and on the right should be the name of the particular court.
4. Somewhere on the next line, either below the name of the court, or in the middle of the page, should be the number of the case.
5. Next below that is the name of the case, and below that the title of the pleading, i.e., Motion To Continue, etc. A sample format is provided at the end of this chapter.

The body of the motion should identify whose motion it is, then the situation that needs to be addressed, as briefly as it can be stated, and the relief that is requested, followed by the title of the agency and the name and signature of the person filing the motion. Finally, each motion should contain a certification indicating that the motion was sent to all concerned parties and/or counsel.

In almost every instance, a motion requests the court to do something that you want it to do. It is a formal request for the court to act. As such, it is a request for the alteration of the status of the case.

Since any alteration of the status of a case will affect all of the parties in some way, it is required that everyone affected be notified of the request.

Consequently, whenever you file a motion, it is required that you send a copy of the motion to every attorney who has filed an appearance, and to every party, i.e., Plaintiff, Defendant, Petitioner, Respondent, who is not represented by an attorney. The copies must be sent at the same time that the original is sent to the court.

The only time that a copy of the motion is not sent is in the rare instance when an Ex Parte Motion must be filed. However, even in that instance, the court will usually require that some notice, with a copy of the motion, be sent to all parties in time for the hearing.

Once the motion is filed with the court, each party must react to the motion. Usually, the reaction is to file an objection or to do nothing. If an objection to the motion is filed, it is required to be filed within 10 days. If no objection is filed within the 10 day period, the courts assume that there is no objection and the motion is automatically granted.

There is no particular form or format for an objection. Generally it follows the same format as the motion. The title is usually either just Objection if there is only one motion pending, or Objection to (Plaintiff's/Defendant's) Motion to (Whatever). The longer title is usually a good idea if there are more than one motion filed at the same time, or there are, or will be, a series of motions filed over the course of the proceedings. By giving full title to the objection, it will preclude the possibility that the objection will be missed.

Very little needs to be stated in an objection, although you will often see an explanation included. At a minimum the objection should identify the party who is objecting, the fact that an objection is raised and a request for a hearing. While most courts almost automatically grant or schedule hearings on contested motions, it does not need to do so if the request for a hearing is not made.

While there is no strict rule as to when motions can be made, it is generally frowned upon if a motion is made much later than 10 days before a trial date. However, for a Motion to Continue, the court rules require that the motion cannot be made any later than 10 days before the trial date.

Since an objection to a motion is a pleading just like the motion itself, the objection must also be sent to all counsel appearing in the case and all parties not represented by counsel. So too must you include a certification statement indicating that the objection was sent.

One major failing that appears to be fairly prevalent among Division for Children and Youth Services workers is the failure to put a <u>date</u> somewhere on the motion or objection. Normally, this would not appear to be a big deal. However, you'd be surprised how often you need to refer back to a date when a motion was filed. You can imagine how frustrating it can be to find a motion, and not be able to pinpoint its date any closer than that it was sometime in a 2 or 3 month period. Occasionally, that date can become critical if you are accused of either doing something without permission, or not doing something that in retrospect needed doing. A date on the motion can overcome that problem very rapidly. Another problem with undated motions appears when 2 or 3 similar motions were filed over a course of months or years. If they are undated, there is no way to tell which was first, second or third. That, too, can create substantial headaches. ALWAYS DATE EVERY MOTION, OBJECTION, OR OTHER PLEADING.

If you really get into a crunch, you just may be able to get out from under by checking the docket card in the Court Clerk's Office. Oftentimes, the clerk will keep a list of every document filed and the date it was received by the court. However, clerks do not favor having people rooting around in their files, so keep this option as a last resort.

While the motions discussed so far have been those written and typed in the safety and sanctity of your offices, oral motions can also be made. Oral motions are just that, those spoken to the court during a trial. They are relatively few in number and are usually made by the defense. Usually they concern motions to dismiss, or motions to strike evidence, but can cover the same range of subject matter as written motions. While you need not be overly concerned with oral motions, you should be aware of their existence, and should use them if the occasion warrants.

STATE OF NEW HAMPSHIRE

STRAFFORD, SS:

ROCHESTER District Court
J86-471

In Re: Sarah L.

MOTION TO CONTINUE

The Petitioner, Division for Children and Youth Services (DCYS), moves the court to continue the hearing scheduled for October 4, 1992.

1. Said hearing was scheduled by the court in its order of March 17, 1992.
2. The purpose of said hearing was to evaluate the progress of the family with respect to the issue of family therapy.
3. The DCYS worker currently assigned to this case has recently been admitted to the New Hampshire State Hospital at Concord for evaluation and treatment.
4. It is anticipated that such evaluation and treatment shall be completed not later than November 1, 1992, at which time the worker will re-assume her duties.
5. It is DCYS' understanding that the family is making appropriate progress in the treatment program.
6. The continuation of this hearing for a period of 30 days will not affect the progress of the family.
7. This Motion has been discussed with all parties who do not object.

WHEREFORE, the DCYS moves the court to:

A. Continue the hearing scheduled for October 4, 1992 for a period of 30 days.

B. Grant such other and further relief as may be just.

Respectfully submitted,

Division for Children and Youth Services

By its employee,
Anna Karinina, Supervisor
Exeter District Office
40 Winter Street
Exeter, NH 03833
(603) 772-1234

_____
Anna Karinina, Supervisor

September 17, 1992

I certify that a copy of the within Motion was sent to all parties and counsel of record.

_____
Anna Karinina, Supervisor

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS:

HILLSBORO District Court
J82-943

In Re: Jennifer E.

OBJECTION

The Division for Children and Youth Services, objects to the Respondent's Motion to Execute Worker dated October 4, 1992, and demands a hearing thereon.

Respectfully submitted,

Division for Children and Youth Services

By its employee,
Joan d'Arc, SW II
Antrim District Office
37 Front Street
Antrim, NH
(603) 352-1234

_____
Joan d'Arc, SW II

Date: September 19, 1992

I certify that a copy of the within Objection was sent to all parties and counsel of record.

_____
Joan d'Arc

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS:

SALEM District Court
J82-943

In Re: Christine A.

OBJECTION TO RESPONDENT'S
MOTION TO EXORCISE WORKER

The Division for Children and Youth Services (Division) objects to the respondent's Motion to Exorcise Worker:

1. The Division's worker assigned to this case has a Doctorate in Thaumaturgy.
2. His particular speciality is in the area of "White" or benevolent Thaumaturgy.
3. The requested exorcism will not assist the child involved, but will, in fact, hinder the therapeutic flow of energies and will delay the recovery of the child.
4. Such delay can do nothing but harm the child.

WHEREFORE, the Division:

A. Objects to Respondent's Motion

B. Demands a hearing thereon.

Respectfully submitted,

Division for Children and Youth Services

By its employee,
Merlin Warlock, SW IV
Salem District Office
54 Pillory Lane
Salem, NH
(603) 893-1234

Merlin Warlock

Date: September 19, 1693

I certify that a copy of the within Objection has been sent to all parties and counsel of record.

Merlin Warlock

CHAPTER XV

Reports to Court

Reports submitted to the court come in a variety of formats from a simple letter to clearly defined formats. While various district offices, and different workers within each office, use slightly different formats, they are all quite similar and generally contain much the same information. However, there is one report that is required by statute, which specifies certain minimum information which must be contained in the report.

RSA 169-C:18 V states that the child placing agency, almost invariably DCYS, "to make an investigation and a social study consisting of, but not limited to, the home conditions, family background, and financial assessment, school record, mental, physical, and social history of the family...." Since the statute indicates that the information required is the *minimum*, you should not feel constrained to provide only the minimum, but should take the opportunity to add such other information as is pertinent and helpful to you or the court. Not infrequently, that additional information makes your job, and the court's, a lot easier and cuts down on the number of hearings.

RSA 169-C:21 II states that the court's final order shall include some plan for treatment and providing of services to the family. That plan is to be based, in whole or in part, upon recommendations of the Division. Since you are required to submit those recommendations anyway, you may as well include them in the report.

While there is no specified report format, a sample format at the end of this chapter is offered as a possible suggestion.

The first report that you submit to the court should be the most thorough since it must provide the court with the entire history of the family. DCYS form 598 is designed for this purpose. The history is what must be considered by both you and the court, in making a determination of the disposition plan.

Consequently, it must be as in depth as possible. Since the report must be submitted to the court for its use at the dispositional hearing, and since that hearing must be held within 30 days of the adjudicatory hearing, 30 days is the maximum amount of time that you have to prepare the report and your recommendations. However, in order to save a lot of time and aggravation on the date of the dispositional hearing, it is wisest to get the report in to the court, and to all parties and their counsel a few days early. Consequently, you should set your deadline for submission no more than 25 days after the adjudicatory hearing. This extra time will permit the judge and all parties to read and digest the report before the hearing date, and should speed up the hearing itself.

Once the final dispositional order is issued, it remains in effect until changed. That change can occur through the filing of a Motion for Modification under RSA 169-C:22. Such a motion is filed if some party feels that there is a sufficiently significant change in the family's circumstances to warrant such a change. A hearing on the motion is to be conducted and an appropriate order issued if there is a sufficient change of circumstances to warrant the change.

Another occasion for the possible change of the order is during the review hearings as scheduled by the court. These hearings can be held as often as the court feels necessary, but in no event fewer than once a year. (DCYS policy and federal regulations require either a court hearing or Administrative Review at the six month interval.)

Since these are additional dispositional hearings you will be required to provide both the court and all parties, with updated supplemented reports per RSA 169-C:24. These should be consistent with IV-E requirements as detailed in SR83-110 and PD85-19.

The supplemental reports should follow exactly the same format as the original report as to the Sections or Headings included. However, only those sections that have been changed or for which additional information has been obtained need have entries. All other sections or headings may contain a statement such as: "No significant changes noted since report of _____."

Since you are preparing a supplemental report, you should investigate, however briefly, each and every section or heading subject to ensure that everyone is up to date on the status of the family. If you fail to investigate each subject, and miss a significant change, you will be hard pressed to explain that failure, and should expect to lose a rather large strip of hide to the judge when he finds out.

In the supplemental reports, you should show what progress, if any, the family members have made towards meeting the recommended goals established by the court. These progress statements should address each and every recommendation.

Additionally, you should again prepare a recommendations section laying out what you believe to be the best actions at that point given the progress, or lack of progress made since the last report.

Since the Division is almost always charged with the responsibility of monitoring the case and progress of the family, you should always make an effort to obtain progress reports from any other agency or professional involved in providing services to the family. These reports should be attached to your report, and should be referred to in your narrative or recommendations to buttress your position.

In most instances, the family that you are involved with usually will have more than one child even though only one, or something less than all, of the children will have been abused or neglected. Since these children may also be

somewhat at risk, it is wise to include in your report, some statement of their present condition. While the analysis of their condition does not have to be in as great a depth as the abused or neglected child, it should be in sufficient depth for the court to get a feel for their present well being, and to judge whether there is any significant change in their will being as time goes on. Reference to these children should also be made in follow up reports to ensure that they are not ignored or lost in the shuffle.

Since you are required to provide a report anyway, it would take little additional effort to prepare a proposed order for the court. Many judges will bless you endlessly for your thoughtfulness, and the reduction of the court's workload, while others may curse your temerity in attempting to usurp their authority. Whether or not you do prepare a proposed order for the court will depend on the particular court. If you're not sure what the court may want, prepare one and offer it to the court. The court's reaction will let you know what you should do in the future.

There are several different ways of preparing a proposed order. One method which has been successful, is to place the recommendation section of the social study on a separate page with the appropriate heading and space for the judge to sign. If this method is used, then a comment should be placed in the Recommendations section of the following effect:

"The recommendations of DCYS are attached to this report as a proposed order for the court's convenience."

Some judges may not appreciate this method since it breaks up the report, and requires that the court go to the effort of making a copy of the order and re-attaching it to the report. Additionally, if the court chooses to strike out some section of the recommendation, it can leave an incomplete record of just what you recommended.

Another method is simply to do the report in the usual manner, and to prepare a separate order containing the recommendation.

Any other method which will accomplish the same purpose can be used as long as it is acceptable to the particular court, and the proposed orders can be prepared for both the original social study and for each supplemental report.

One possible format for such an order is attached. However, the format of the order should be tailored to the particular court and judge.

STATE OF NEW HAMPSHIRE

COOS, SS: BERLIN District Court

In Re: Andrea L.

SOCIAL STUDY

The following Social Study is submitted to the court pursuant to RSA 169-C:18 V.

I. BACKGROUND: This section should be used to outline, very briefly, the allegations received, the investigation done, the evidence obtained, the date of the petition, hearings, and findings.

II. HOME CONDITIONS: This section is used to report the home conditions found during the investigation of allegations including the location, size and physical condition of the dwelling. It should outline the cleanliness, existence or non-existence of necessary facilities, furniture and amenities such as hot water, refrigerator, etc. The description should give the court a feel for the actual physical dwelling. Usually, this is of substantial importance in neglect cases, but does not bear much weight in many abuse cases.

This section should also be used to give the court some feel for the family unit as to who resides in the house, their interaction with each other, where everyone sleeps, general treatment and feelings towards each other.

III. FAMILY BACKGROUND: This section is used to give a biographical of everyone in the household, including ages, dates and places of

birth, educational background, dates of marriage, previous marriages, previous residences, prior military or criminal history, past DCYS involvement, etc.

IV. FINANCIAL ASSESSMENT: This section is used to specify whether father or mother work, where, what their jobs are, how long employed there, how much they earn, the extent of their indebtedness, past bankruptcies, present assets, etc.

V. SCHOOL RECORD: This section should be used to give an in-depth background of the child in whose name the petition is brought. The information should include grade the child is in, present grades, past grades, past counseling, if any, IEP if the child has spacial education needs and any past records or information.

While the report is geared to address the specific child, it is not a good idea to ignore other children in the home. Consequently, you should include abbreviated school information on all other children in the home.

VI. MENTAL HISTORY OF THE FAMILY: Most probably, the family will have no mental history, in that there will not have been any evaluations or treatment by a psychologist, psychiatrist, clinic or other professional. If that is true, enter a statement to that effect.

On the other hand, if such evaluation or treatment does come to light, you should specify when it occurred, by or through which professional, the diagnosis, nature and length of treatment and results of treatment.

Since this information is for the family, it could well be obtained from the school for the children or through church or other officials.

VII. PHYSICAL HISTORY: Here, you should include any significant physical problems, defects or treatment. Again this is requested for the family, so all members of the family should be addressed.

Usually, problems such as colds, sore throats, etc. should not be noted unless they are unusually frequent or led to complications, intensive treatment, hospitalization, or surgery.

VIII. SOCIAL HISTORY: This section should be used to outline community service or involvement, church attendance, civic organization membership or anything else of note. For the children it may include involvement in team sports or school clubs, etc.

IX. RECOMMENDATIONS: This section is where you will make your specific recommendations to the court. To the extent possible, it should address each and every member of the household, with particular emphasis on the child or children affected and the parent against whom the petition was brought and the finding made.

When a course of treatment is recommended, specify who the treatment is for, the nature of the treatment, and anticipated length of the treatment, who will provide the treatment, who will pay for it, final goals to be achieved, interim goals the person is to strive for and time lines for such interim goals, proposed dates of future progress hearings, and any other information that may be useful to the court. While it sounds like a tall order, it can be done with the cooperation of the various professionals and agencies.

Nor should you balk at setting interim time lines and goals, so long as you stress, and the court and all participants understand, that we are dealing in a very ill defined and minimally understood

area of the human mind. It must be stressed and everyone must understand that these are merely anticipated guidelines that will have to be adjusted based on the progress that each of the involved family member makes. They should never be used as hard and fast guideposts that must be met or sanctions imposed.

Respectfully submitted,

Division for Children and Youth Services

By its employee,
Sigmund Frued
Vienna District Office
1 Loony Strasse
Vienna, Austria

_____
Sigmund Frued

Date: October 4, 1992

(No certification is necessary, court will distribute)

STATE OF NEW HAMPSHIRE

GRAFTON, SS:

LINCOLN District Court
J82-943

In Re: Kathryn L.

SUPPLEMENTAL REPORT

The following supplemental report to the Social Study is hereby submitted:

I. BACKGROUND: See Report of October 4, 1992.

II. HOME CONDITIONS: State whether there has been a change in residence or some improvement or change in the home. If none, simply state no change observed.

III. FAMILY BACKGROUND: Probably no change has occurred so merely refer to the original report. However, if some notable change did occur include it.

IV. FINANCIAL ASSESSMENT: If no significant change say so, but if a notable change include it.

V. SCHOOL RECORD: Changes here will occur as time and the case goes on. However, entries probably need not be made more than every six months to a year unless something of significance did occur.

VI. MENTAL HISTORY: Refer to the first report. Any counseling, etc. that is part of an ongoing treatment plan should be addressed elsewhere.

VII. PHYSICAL HISTORY: Refer to the first report unless something significant such as hospitalization or surgery occurred.

IX. PROGRESS TO DATE: This is a new section that must be added in the supplemental reports to indicate where each family member is at this point in time, after involvement in therapy or treatment. The progress

report should address each concerned family member, and should also address any changes to the non-involved family members. If progress is poor, give reasons. Back this section up with reports and refer to those reports.

X. RECOMMENDATIONS: The recommendations in the supplemental reports should follow the format in the original report. However, changes in therapy, treatment and time lines should be laid out and the reason for the changes explained. Refer here to any reports obtained to substantiate the recommendations.

XI. ATTACHMENTS: List in this section all of the reports or other documents gathered in the preparation of the report.

Respectfully submitted,

The Division for Children and Youth Services
By its employee
Quasimodo SW V
Bellringer District Office
Notre Dame Cathedral
Paris, France

_____
Quasimodo

Date: March 13, 1993

STATE OF NEW HAMPSHIRE

SULLIVAN, SS: LONDON District Court

In Re: Oliver Twist

ORDER

A hearing was held on October 4, 1992, present were Fagin; Mr. Scratch, atty. for Fagin; Sherlock Holmes, Guardian Ad Litem; Dr. Watson, Social Worker, Daniel Webster, atty. for DCYS.

The court finds that Fagin has neglected the minor, Oliver Twist, and in so doing has contributed to the potential delinquency of said minor. The court therefore, orders:

1. That Fagin shall henceforth be taken to the Town Square and shall there be flogged.
2. That Fagin shall immediately be presented to Prof. Moriarity who who shall provide such therapy as may be necessary and appropriate.
3. The minor child, Oliver Twist, shall be placed in a suitable foster or group home where he shall be given such sustenance as he may need without being required or precluded from asking for more.
4. Prof. Moriarity shall provide to this court a full report on the progress made by Fagin at least every three months.
5. A hearing on the progress of Fagin and the child shall be scheduled for April 4, 1995 at 10 a.m.
6. A failure to show improvement by Fagin at the time of that hearing will result in the hanging of Fagin.

Judge Roy Bean

CHAPTER XVI

Divorces

Perhaps the most difficult issue that the Division must face is its involvement in certain divorce proceedings.

The vast majority of the Division's involvement with family units is at the District Court level. Usually, there is no involvement at any other level or in any other court without the initial District Court involvement. Such other court involvement is usually restricted to Probate Court appearances, to obtain permission for extended health care, for Termination of Parental Rights or for other actions.

The Division's involvement in divorce proceedings is entirely different because the Division is brought into the matter by court order and without any prior notice or involvement. The Court's authority for doing so comes from the Divorce Statutes, more particularly RSA 458:18 (Supp. 1985). RSA 458:18 appears to be concerned with who will pay for the Division's involvement and the care of the children placed in the Division's custody. That statute refers to authority granted to the court by RSA 458:16 & 17.

A careful reading of those two statutes indicates that both speak of the Court's authority to make orders with respect to the custody, care and welfare of the children of the divorced parents. Neither speaks directly to the issue of granting custody to the Division, nor does either establish any criteria for such a decree. Consequently, it seems that the Court has almost unbridled authority to place the children almost anywhere it wants for almost any reason. Fortunately, however, that is not quite true.

The New Hampshire Superior Court Administrative Rules do address this issue, and set some limits on the court's use of the Division. Rule 12-14 is entitled "Division of Welfare Referrals" and states as follows:

"No referrals for New Hampshire Division of Welfare investigations are to be automatically approved, even when the parties agree. A show cause hearing is to be required except in extraordinary circumstances, and when referrals are approved, inquiry is to be made to determine if the party or parties are to hear the costs of reference."

What this administrative rule seems to say is that the Division is not to be brought into a case unless there is some good reason for the involvement. It goes on to say that if there appears to be a good reason for involvement, then the court must hold a show cause hearing before the order is made.

Probably the simplest description for a show cause hearing is to say that it is the civil action equivalent of a probable cause hearing. The standards here are fairly easy to meet, as are the burdens.

As a minimum, you should expect the hearing to include a statement of precisely why the children should be turned over to the custody of the Division, and a statement of facts, or testimony on precisely what has occurred that would warrant such action.

However, be forewarned that virtually none of the marital masters who issue such orders appear to be aware of this administrative rule and none use it or comply with it. Consequently, you should expect to become involved without benefit of any such hearing.

If you find yourself in the position of being drawn into such a case, your first step should be to file a Motion requesting that such a hearing be held under this rule. You should also request that the court clearly indicate the purpose of the Division's involvement, and the length of the Division's involvement. Unfortunately, again, you will probably not get any great satisfaction from either request.

The Division's involvement in divorce cases raises substantial issues as to your purpose for being there, your authority while involved, the actions that you can or should take, and the involvement of other courts.

Your purpose for being involved is because the Court wants you there. Probably, the Court has heard some evidence to the effect that the children are being either abused or neglected. Such allegations in hotly contested divorce and custody battles are becoming even more frequent. If you are given custody because of such allegations, you should treat the order and the allegations in the same manner as you would treat any other abuse or neglect referral. You should formally notify the Court, and all parties, that you will conduct an investigation according to RSA 169-C and will report your findings to the Court. However, you should also notify the Court and all concerned that if, after investigation, you believe that the allegations are founded, you will bring a petition to that effect in the appropriate District Court. You should also request that the Court suspend any further proceedings on the divorce or custody issues until your investigation is completed, and the report can be submitted since if a petition is filed and the District Court makes a finding, that court order will be controlling on the custody issue.

If you do not take the steps suggested above, you will be left in a position of responsibility with little or no clear cut authority to do much of anything. RSA 458 does not specify what your responsibility is, other than that you have custody. Custody is not defined in that statute as it relates to the Division, and that statute does not define the parents' rights with respect to the children while in the Division's custody. That kind of situation leaves everyone open to misunderstandings and substantial potential for turf battles.

On the other hand, if you act as though this is a referral under RSA 169-C, everyone knows precisely where you stand. They will know what you are doing and why. They will know where you are heading and what the ultimate results may be. It sill also make everyone think twice when they realize that your involvement may well take the case out of the marital master's hands, and leave it in the hands of a District Court Judge.

Finally, by taking these steps, you may well be creating a self limiting involvement. If there is apparent abuse or neglect, your involvement will be in the arena of the District Court under the statute you are most familiar with working towards a goal you are comfortable with. On the other hand, if the allegations are unfounded, your report to the marital master will clearly state that with an accompanying recommendation that custody be returned to the parent found most appropriate by the master, and that the Division be dropped from the case.

In some instances, the Court will request that you provide it with some input as to which is the better parent, or to which of the parents the children should be granted. It is strongly recommended that you do not make such a value judgment, unless the reasons for your recommendations are clear and unequivocal. Those reasons should be of such a nature that the general consensus of everyone privy to the same reasons would arrive at the same conclusion. If the reasons are not that clear and convincing, you are expressing a personal opinion that is no more valid than that of anyone else. Such an opinion will put you in the middle with both parties going after you. It is a virtual guarantee of continued involvement in a very unsavory situation. And the longer you are involved, the more embroiled you will become, and, ultimately the less neutral and professional you become in the eyes of one or both of the participants regardless of the effort you make to remain so.

Since your goal should be to limit your involvement in such matters, the steps mentioned earlier should be taken as soon as possible after you've been notified of the court's order. The various steps mentioned can be handled through motions filed upon your notice of involvement. Those motions should be written in such a way as to get the point across to the court of your requirement for investigation and formal action under RSA 169-C. Possible forms of such motions are attached.

STATE OF NEW HAMPSHIRE

BELKNAP, SS:

Superior Court
J86-471

Samson

V.

Dehlila

MOTION FOR SHOW CAUSE HEARING

The Division for Children and Youth Services (Division) moves the court to conduct a show cause hearing pursuant to New Hampshire Superior Court Administrative Rule 12-14D.

1. The Division was given custody of the parties' children pursuant to a court order dated May 21, 2031 B.C.
2. The Division is unsure of the purpose of its receiving custody other than as a result of some reference to the jawbone of an ass.
3. The Division has no guideline or direction for the purpose, nature or length of its involvement.
4. The above cited administrative rule requires the court to conduct a show cause hearing before the Division is involved.
5. No such hearing has been conducted.

WHEREFORE, the Division moves the Court to:

A. Conduct a Show Cause hearing relative to the Division's involvement.

B. Grant such other and further relief as may be just.

Respectfully submitted,

Division for Children and Youth Services

By its employee,
Hammurabi, King
Persian District Office
Hanging Gardens
Babylon, Persia

_____
Hammurabi

Date: May 27, 2031 B.C.

I certify that a copy of the within Motion was sent to all parties and counsel.

_____
Hammurabi

STATE OF NEW HAMPSHIRE

CARROLL, SS:

Superior Court
J82-943

Eve

v.

Adam

MOTION TO STAY PROCEEDINGS

The Division for Children and Youth Services (Division) moves the court to stay any further action with respect to the parties' minor children.

1. On or about April 27, 4004 B.C. the Division was granted custody of the parties' minor children as a result of allegations of apparent neglect.
2. The Division is required to perform an investigation of such allegations pursuant to RSA 169-C:34.
3. Should the investigation prove that the allegations were founded, the Division is required to bring forward a Petition for Neglect in the District Court.
4. A finding of neglect by the District Court pursuant to RSA 169-C:21 will result in the issuance of an order relative to the placement of the minor children.
5. Such order may not be changed by the Superior Court except upon appeal. RSA 169-C:4 III.
6. Further action by this court will serve no purpose but to cause confusion and raise jurisdictional issues.

WHEREFORE, the Division moves the court to:

A. Suspend any further hearings or action with respect to custody until the Division completes its investigation.

B. Grant such other and further relief as may be just.

Respectfully submitted,

Division for Children and Youth Services

By its employee,
SSSerpent
Garden of Eden District Court
Corner Tigris & Euphrates
Persia

_____
SSSerpent

Date: April 30, 4004 B.C.

I certify that a copy of the within Motion was sent to all parties and counsel of record.

_____
SSSerpent

CHAPTER XVII

Cooperation With Contract Attorneys

Despite everything that has been said throughout this manual, there will always be occasions when the services of a contract attorney will be necessary. Those attorneys are members of the Bar who are in private practice, but who, for whatever reason, have chosen to represent the Division. In almost every case, their contract with the Division calls for them to receive an hourly rate that is one half, or less, of their normal hourly rate. In many instances, these attorneys continue to represent the Division despite severe pressure from their partners or associates to drop the Division because continuation of the relationship is not only uneconomical, but is often a money losing proposition. Consequently, the less of their time that is wasted and unproductive, the less their loss and the greater likelihood they will continue to represent the Division.

In many instances the attorney is brought into the case after the investigation is completed, after the petition has been filed, after the preliminary hearing, after the Guardian Ad Litem has been appointed, after the attorney for the parents has been appointed and just before the date of the adjudicatory hearing. As a result, the contract attorney is the one bearing the greatest burden, but also the one who has the least knowledge and the least opportunity to prepare for the hearing. If he or she does not get all possible assistance in the earliest digestible form, the chances are that they won't be very effective or particularly pleased. In order to avoid that problem, and the problem of not even being able to find an attorney because of conflicts, there are a series of steps that you must take.

First, determine what case or cases will turn sour on you at the earliest moment possible. Do not wait until you are completely over your head before you try yelling for help. The longer you wait, the more difficult it will be for the contract attorney to bail you out. You wouldn't wait until you're on your way to the funeral parlor before calling a doctor, so why wait that long before calling on a contract attorney.

Second, call the attorney, give the date and time of the hearing, where it is to be held, and a brief statement of the nature of the case and the problems you are facing. Make sure the attorney knows the names of the parties, the opposing attorney and the Guardian Ad Litem.

Third, if the case is accepted, immediately send a brief synopsis of the case including dates of the abuse or neglect, court hearings and results, if any, witnesses and what they will testify to, other agencies or professionals and their findings, any defenses that may be used by the parents at the time of trial, and any other relevant information.

Fourth, along with the synopsis, send clear, legible copies of the petition filed, all court orders, all reports obtained or filed, your dictation or notes on the case, and any other pertinent information in your file. Make absolutely sure that all documents are in the appropriate sequence by date. To the extent possible, cross reference the documents with the synopsis and your dictation or notes.

Fifth, if possible, meet with the attorney as soon as can be arranged after the materials are received.

Sixth, because of the factors previously discussed, the attorney will rarely have the time or the inclination to do substantial amounts of investigation or obtaining documents. Much of that will undoubtedly be left to you. The attorney will explain what else is needed to make the case. Take notes, and make sure you get whatever is needed as soon as you can. Keep the attorney updated on your progress and any problems you encounter in getting what is wanted. If the attorney doesn't hear from you he or she will assume you've gotten everything. Don't leave the attorney hanging at the last minute without an opportunity to take steps to get what you couldn't.

Seventh, make sure you meet with the attorney about one week prior to the hearing to go over the case, set the order of witnesses, determine the exhibits and order of their submission, and do whatever else needs to be prepared for the hearing.

Eighth, make sure that you have all of the witnesses lined up and ready to go on the date of the hearing. If necessary, get subpoenas to all witnesses several days before the hearing date.

Ninth, on the date of the hearing, make sure you are there, and make sure that you are at least 15 to 30 minutes early. That time can be used to go over any last minute problems, or a last run through of the testimony.

Tenth, during the trial sit with the attorney. Assist him or her to the extent that you are able, in finding documents or other evidence. Make notes of your testimony you feel needs to be addressed. If you must communicate with the attorney do so by writing notes. Do not talk to or distract the attorney while someone else is talking or something important may well be missed.

Eleventh, after the trial, buy the attorney a beer. You'll probably both need it.

APPENDIX

The Appendix includes Division for Children and Youth Services policy and forms as of October, 1986. These are subject to change and this portion of the Manual should be updated as required.

YES

s; torso; head, face, genitals)?

erely injured (been

YES

he remain in imminent

YES

reports:

ident) or

e taking, exhibitionism, oral/genital

osed to some previous

e or she remain in

YES

... Bone Fr... ... Skull)
4 Dislocation/Sprain/ Twisting or Shaking
5 Internal Injuries
6 Malnutrition
7 Failure to Thrive
8 Exposure to Elements
9 Locking In or Out
10 Fatality
11 Burns/Scalds
12 Cuts/Bruises/Welts
13 Sexual Abuse
14 Emotional Abuse

... Educational Neglect
19 Abandonment
20. Lack of Supervision
21. Inadequate Self-Care
22 Defective Judgment
23. Danger to Self
24. Inability to Cope
25. Living in Hazard Cond.
26. Danger to Others
27. Conflict With Community
99 Other (Specify)

... Diagnosed Phys. Handicap
4. Diagnosed Chronic Illness
5. Diagnosed Senility
6. Diagnosed Blindness
7. Diagnosed Emotion. Cond
8. Over 65
9. Unknown

COURT ACTION TAKEN DURING INVESTIGATION ☐ YES ☐ NO
(Complete Shaded Areas Only If Case is Founded)

... Lack of Tolerance to Child's Disobedience & Provocation
M Handicap or Chronic Illness
N Alcohol Problem
O Drug Problem
P Diagnosed Mental Retardation
Q Mental Health Problem
R Misuse of Available Income
S Authoritarian Method of Discipline
T Lack of Parenting Skills
U Unemployment
V Eviction

DATE COMPLETED ______ BY ______

DCYS Form
202
MAY, 1986

urs?

late housing/hazardous living
re, lack of plumbing/heating,
educational deprivation; failure

tions (cooperative, open

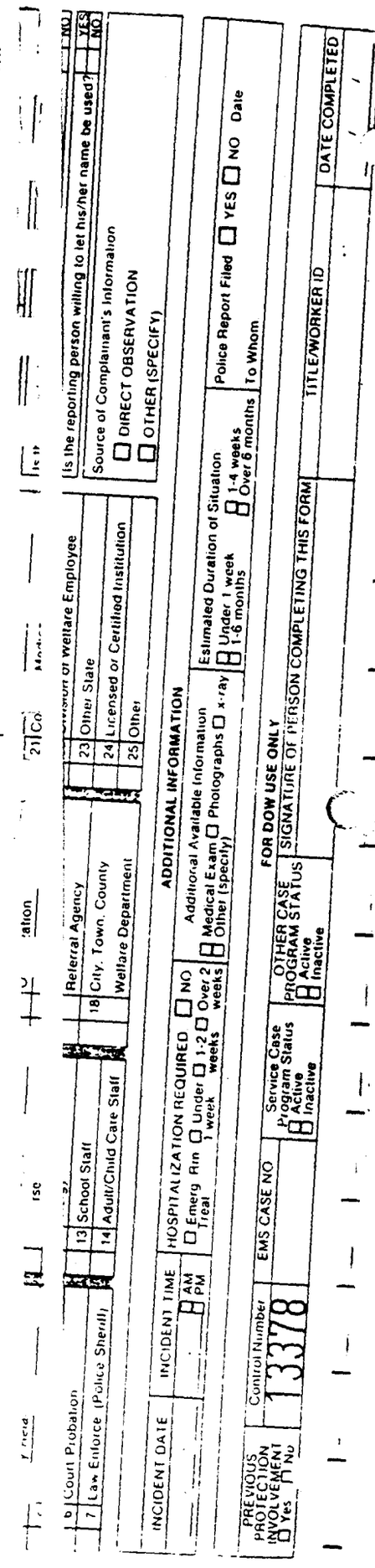
safety (no ☐ YES en , physical problems, or substance

the home?

ert rejections of child, severe
ement, forcing inappropriate

ervention to the family? If so,

onically substance dependent,



E. If EMOTIONAL NEGLECT, ask:

1) What is the nature of the neglect (failure to thrive, continued withholding of physical or emotiona contact, continued withholding of emotional support especially in stressful situations, continuec withholding of comfort, parent/child role reversed)?

F. If ABANDONMENT, ask:

1) Is the child abandoned? ☐ YES

2) When was the child abandoned?_____

3) Where is the child now?_____

4) Is there a reliable family member, relative, or friend that could care for child while investigation is being completed?

NOTE: If a box is checked in Sections A-F above, a worker must respond immediately or verify that another agency, i.e., hospital, police, local welfare, or church, has responded and the child is no longer at risk.

G. Is this reporter willing to be contacted by Law Enforcement Personnel regarding this incident? ☐ No ☐ Yes

Is it known that the alleged perpetrator has a founded report of abuse or neglect? ☐ NO ☐ YES

☐ Severe Risk ☐ Moderate Risk ☐ Mild Risk

Date Referred ___/___/___ Signature _____

Additional Comments:

PART II: DCYS Supervisor

☐ Severe Risk ☐ Moderate Risk ☐ Mild Risk

Signature _____

Date Assigned ____/____/____ to _____ (worker's name)

NOTES:

Social Worker's Response:

☐ Immediate notification to Law Enforcement Agency

_____
Name of Agency

_____
Name of Contact

_____
Date and Time of Contact

☐ Immediate face-to-face interview

☐ Face-to-face interview within 24 hours

☐ Face-to-face interview within 48 hours

☐ Face-to-face interview within 72 hours

☐ Telephone or Mail Contact

☐ Collateral Contact

PART III: Social Worker

Investigation initiated on ____/____/____ Signature_____

Assessment after Initial Investigation (Based on "Assessment of Risk Matrix"):

☐ Severe Risk ☐ Moderate Risk ☐ Mild Risk

Explanation, if necessary:

_____ ____/____/____ _____

Social Worker's Signature Date Supervisor's Signature

State of New Hampshire
Division of Welfare

598
6/83

Office of Social Services

SOCIAL SERVICES ASSESSMENT
CHILD AND FAMILY SERVICES

Date of Application/Referral _____
Source of App/Referral _____

I. Identifying Data

Name: (Casehead) DOB: Sex:

Address:

Living Arrangement: Telephone

Legally Liable Unit:

Family/Household Members:

Name	DOB	Sex	Relationship
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

II. Summary of Presenting Problem

III. Factual Information

A. Employment and Education Status/History

B. Living Conditions

C. Financial Status

D. Family/Marital History

E. Health History

F. History and Description of Abuse/Neglect Incident

G. Developmental History

H. Summary of Collateral Contacts

IV. Current Assessment

A. Physical/Behavioral Manifestations of Abuse/Neglect

B. Mental/Emotional Functioning

C. Specify Client/Family Condition

D. Family Interaction Assessment

E. Client/Family Support System

F. Indication of Client's Motivation/Cooperation

G. Risk of Harm

V. Social Worker Assessment/Evaluation

VI. Case Plan

A. Goal

B. Services to be Provided

1. Direct

a. Frequency

b. Duration

2. Vendored

a. Frequency

b. Duration

3. Contracted

a. Frequency

b. Duration

4. Case Management Activities

C. Expectation of Client/Family

Social Worker _____ Date Completed _____

Supervisor _____ Date Reviewed _____

STATE OF NEW HAMPSHIRE
DIVISION FOR CHILDREN AND YOUTH SERVICES
BUREAU OF CHILDREN

ADMINISTRATIVE REVIEW FORM

519
3/85

Child's Name _____ Status _____ DOB ___/___/___

Current Placement Type _____ Original Placement Date ___/___/___ Current Placement Date ___/___/___

Location of Current Placement _____

Child's Special Needs (if any) _____

1. Summarize the factors leading to placement. _____

2. State the conditions which must be met before the child can return home and indicate what progress has been made in this area. _____

3. List the services provided to the parents since the date of placement or the last review, the results that were originally expected, and how effective the services have been. _____

4. List the services provided to the child since the date of placement or the most recent review, the results that were originally expected, and how effective the services have been. Include any supportive work done with foster parents. _____

5. Indicate the extent to which the child and the parents have been involved with the case plan. _____

6. The permanent plan for the child is:
   - ☐ Return to parents
   - ☐ Guardianship by a relative or other person
   - ☐ Adoption
   - ☐ Independent living
   - ☐ Permanent foster care (contracted foster care)
   - ☐ Other

   Indicate the date set for implementing the permanent plan ___/___/___

7. Identify the current needs of the child and the services which are going to be provided to meet those needs. _____

8. Identify the current needs of the parents and the services which are going to be provided to meet those needs. _____

9. Identify the current needs of the foster parents and the services which are going to be provided to meet those needs. _____

10. Indicate the number of contacts which the DCYS worker plans to have with the child, the parents, and the foster parents _____

11. Is there a need for the child to continue in foster care? ☐ Yes ☐ No

    Is the placement appropriate according to Section F of the case plan format? ☐ Yes ☐ No
    If not, what efforts are being made to locate an appropriate placement?

12. Indicate any areas of concern and/or disagreement. _____

Date: _____

Signatures of all individuals who attended the Administrative Review:

1. _____
   Parents' or Guardians' names

2. _____
   Parents' or Guardians' names

_____
Reviewer

_____
DCYS Supervisor

FAMILY SERVICES PROGRAM
ITEMS (680) - 699

FAMILY SERVICES PROGRAM
ITEMS (680) - 699

PD 86-14

STATE OF NEW HAMPSHIRE

Inter-Department Communication

FROM: David A. Bundy
OFFICE OF THE DIRECTOR

DATE: May 29, 1986

AT (OFFICE): Division for Children and Youth Services

SUBJECT: Establishment of DCYS/Law Enforcement Protocols and DCYS Policy

TO: DCYS Bureau Administrators
DCYS Area Administrators
DCYS District Office Supervisor and Assistant Supervisors
YDC and Philbrook Center Superintendents

June 1, 1986
Effective Date

The Division for Children and Youth Services and the Office of the Attorney General has jointly adopted the attached protocols for use in child abuse cases. These Protocols are specific as to the duties and responsibilities of both DCYS and Law Enforcement. The procedures attached are established as the policy of this Division.

POSTING INSTRUCTIONS

DCYS Manual

Remove and Destroy	Insert
None	Post this PD, 1 page, and the Protocols, 13 pages, after ITEM 899.

TRAINING

Training in each District has already been accomplished by a joint DCYS/Law Enforcement Team. Inquiries should be directed to Area Administrators for resolution.

DISPOSITION

This PD and the attached Protocols, are to be maintained in the DCYS Manual until further notice.

DISTRIBUTION

This PD, with attachment (13 pages), is distributed to all DCYS Manual holders and selected DCYS and DHS staff.

DAB/JER:ljk

Attachment: Protocols, 13 pages.

PROTOCOLS FOR DIVISION FOR CHILDREN AND YOUTH SERVICES AND LAW ENFORCEMENT IN DEALING WITH CASES OF CHILD ABUSE

A. Procedures To Be Followed By The Division For Children And Youth Services:

1. Referrals to Law Enforcement

(a) When Made

Referrals shall be made by DCYS staff whenever there is reason to believe that any person under the age of 18 years has been:

(1) sexually molested;

(2) sexually exploited;

(3) intentionally physically injured so as to cause serious bodily injury;

(4) physically injured by other than accidental means so as to cause serious bodily injury;

(5) a victim of a crime.

See RSA 169-C:3, II (Supp. 1985); RSA 169-C:38 (Supp. 1985).

(b) What to Include

DCYS staff shall make an oral report immediately, by telephone or otherwise, to the appropriate law enforcement agency as described below. Written information shall be provided to the law enforcement agency within two working days, and shall include the following:

(1) Name and address of the victim;

(2) Name and address of the alleged perpetrator;

(3) Name and address of the parents or guardians of the child;

(4) Nature and extent of any injuries to the child;

(5) Date, time manner and place of the offense;

(6) Name and address of the person who originally reported the abuse or neglect, if this individual has agreed to be contacted by law enforcement;

(7) Investigative steps, if any, already taken by DCYS;

(8) Previous reports on the alleged perpetrator, if available;

(9) Any other information DCYS considers necessary for the law enforcement agency to conduct its investigation; and

(10) Name of the person within DCYS who may be contacted for additional information and to assist with interviews.

DCYS staff shall forward to the County Attorney a copy of the information provided to the law enforcement agency.

2. Appropriate Law Enforcement Agency

Attached is a list of cities and towns in each county, and the telephone number of the appropriate law enforcement agency to contact. In towns witnout a full-time police department, both the County Sheriff's Department and the State Police telephone numbers are listed. These law enforcement agencies may be contacted on a 24-hour basis.

3. Determining Where Incident Occurred

For purposes of referrals, DCYS staff shall contact the appropriate law enforcement agency listed for the city or town where the incident allegedly occurred. If this information is unavailable, contact the appropriate law enforcement agency for city or town where the child lives. If this cannot be determined, contact appropriate law enforcement agency for the city or town where the child is found.

4. "Serious Bodily Injury"

"Serious bodily injury" means any harm to the body which causes severe, permanent or protracted loss of or impairment to the health or of the function of any part of the body. Examples of serious bodily injury include but are not limited to: injuries which require hospital admission or treatment, extensive bruises, burns, broken limbs, etc.

5. Interviews of Victims

Interviews of the victim will be limited. Whenever possible, DCYS and the appropriate law enforcement agency will conduct joint interviews of the victim. Videotaped interviews of victims and other child witnesses are encouraged.

6. Interviews of Alleged Perpetrators

(a) Types of Alleged Perpetrators:

(1) Not a household or family member;

(2) Household or family member;

(3) Household or family member, no crime involved.

(b) Interviews

Interviews with types (1) and (2) alleged perpetrators will not be undertaken by DCYS staff unless a representative of the appropriate law enforcement agency is present or a representative of the appropriate law enforcement agency has requested DCYS participation in the interview. If during the course of an interview with a type (3) alleged perpetrator, or an interview which the law enforcement agency has permitted to be conducted without its representative present, DCYS staff develop reason to believe that a crime has occurred, the interview will be terminated following normal procedures, and the referral procedures outlined above will be followed immediately.

(c) Law Enforcement Investigation

DCYS shall cooperate fully with any law enforcement investigation concerning child abuse. Information received by DCYS from law enforcement regarding investigation or prosecution of an alleged perpetrator shall be kept confidential and not released without authorization from the law enforcement agency.

7. Physical Evidence

Physical evidence is tangible evidence, such as photographs, pornography, or a victim's stained or

torn clothing. If physical evidence is given to or otherwise obtained by DCYS staff, it shall be relinquished to the appropriate law enforcement agency immediately. DCYS staff shall document the "chain of custody" of any such evidence -- that is, keep a written record of how the evidence was obtained, who had actual possession of the evidence, where it was stored, and the like. Documenting the "chain of custody" is necessary to establish the admissibility of evidence at trial.

B. Procedures To Be Followed By Law Enforcement Personnel

1. Reporting to Division for Children and Youth Services

(a) When Made

In accordance with RSA 169-C:29 (Supp. 1985), any police officer or staff member of a law enforcement agency having reason to believe that a child has been abused or neglected shall report the same immediately, by telephone or otherwise, to the local district office of the Division for Children and Youth Services. See RSA 169-C:3, II and XIX (Supp. 1985). A list of local DCYS offices and their respective telephone numbers is attached.

(b) What to Include

Reports by police officers or other law enforcement staff to DCYS shall include:

(1) Name and address of the child suspected of being abused or neglected;

(2) Name and address of the parents or guardians of the child;

(3) Name and address of the person(s) suspected of causing the abuse or neglect;

(4) A description of the nature and extent of any injuries to the child;

(5) Whether any immediate danger to the child is perceived which would require removal of the child from the home or area;

(6) Whether law enforcement staff are conducting an investigation;

(7) Any other information which may be pertinent, such as the name of the officer or staff member to whom DCYS should address further information or questions.

If an oral report is made, it will be followed within 48 hours by a written report to DCYS, if so requested. See RSA 169-C:30 (Supp. 1985).

2. Removal/Non-Removal of a Child

The type of perpetrator, as outlined in Part A(6) above, is a factor in determining whether a child should be removed from the home. Since removal of a child from the home is often a very complex issue, call the local district office of the DCYS if any uncertainty exists regarding child's safety, availability of placements, etc.

3. Law Enforcement Investigation

If the perpetrator is type (1) or (2) as outlined in Part A(6) above and a criminal investigation is ongoing, the law enforcement agency will so inform DCYS at the time of making its report, and indicate any limitations it may require on the mandatory investigation by DCYS. However, the law enforcement agency may not prevent DCYS from interviewing and assessing the current situation of the victim and any other children in the household.

If the law enforcement agency limits the DCYS investigation, the law enforcement agency will: (1) commence its investigation within 72 hours of receipt of the report from DCYS, see RSA 169-C:34,I (Supp. 1985), and (2) contact the DCYS office which received the initial report within 60 days from the date DCYS received that report. At that time, the law enforcement agency will inform DCYS whether the report was determined to be credible or not credible, or whether the investigation is continuing.

As soon as the report is determined to be either credible or not credible, the law enforcement agency will send written notification of this to DCYS, along with a discussion of the results of the investigation. This information will be recorded in the DCYS Central Registry file. See RSA 169-C:35 (Supp. 1985).

Any information received by law enforcement from DCYS will not be released unless necessary to further the criminal investigation and prosecution of an alleged perpetrator.

If the law enforcement agency requires information from DCYS in addition to the information supplied pursuant to Part A(1)(b) above, a court order must be obtained. In addition, the grand jury may subpoena confidential information from DCYS.

4. Interviews

Multiple interviews of victims should be avoided by coordinating interviews with DCYS if possible. Videotaping of interviews is encouraged, particularly with young victims. Whenever necessary, request the assistance of DCYS staff in interviewing victims.

SR 83-92

STATE OF NEW HAMPSHIRE

INTER-DEPARTMENT COMMUNICATION

FROM: OFFICE OF THE DIRECTOR DATE September 22, 1983

AT (OFFICE) Division of Welfare

SUBJECT: The Social Services Management Improvement Project

TO: ALL DISTRICT DIRECTORS

ATTENTION: All AS, CFS and I&R Supervisors

September 26, 1983
Effective Date

BACKGROUND

This SR releases policy changes which result from work done by the Management Team Project on Social Services. These changes are being implemented in response to the recommendations of the Touche-Ross Management Consultant Firm.

The policy changes cover the following areas:

- the social services assessment process. Two new assessment forms (Form 597 for Adult Services cases and Form 598 for Child and Family Services cases) are being released. Form 501, "Social Service Plan Sheet" is no longer to be used as of the effective date of this SR. The posting instructions to SR 83-84 (which released revised Form 502, "Social Services Notification Form") formally remove Form 501 from the Forms Manual.

- requirements for case recording and progress notes. Section 7400 of the SRS Manual on case recording is now obsolete.

- release of Form 599, "Case Contact Log"

- redeterminations

- case closings

- case transfers

- case files. Section 7500 of the SRS Manual (relative to Social Services Case Files) is now obsolete.

I. SOCIAL SERVICES ASSESSMENT

A. In order to identify and authorize the appropriate services to an eligible individual or family, an evaluation of their situation is necessary. Therefore, the Social Service Assessment Forms (Form 597 for AS cases and Form 598 for CFS cases) are completed. The Social Services Assessment is designed to collect information sufficient to:

1. identify the client's presenting problem,

2. identify the client's condition.

3. determine a need for intervention,

4. establish a case plan to include services that will be provided, how often (frequency) and for how long (duration).

The instructions to Form 597 include a Level of Incapacity Chart and a Client Condition List. The instructions to Form 598 include a Protective Services Assessment of Risk Matrix and a Client Condition List. These materials are to be used with Forms 597 and 598 only.

B. The assessment is required on all open AS and CFS protective service cases, family service cases, and Adult Services cases. Exceptions to this requirement are:

1. denied or withdrawn applications,

2. unfounded or incomplete protective referrals,

3. employment and training support services only cases,

4. adoption cases,

5. cases in which child day care service is provided for employment reasons,

6. Child and Family Services placement cases (the current case plan outline released by SR 82-27 for use in placement cases is used instead of the assessment form).

7. professional courtesy activities

C. The social service assessment must be completed within 30 days of the date of application or referral or within 60 days of the date that a report of abuse or neglect was referred to the AS or CFS social worker.

D. After the assessment is completed, Form 502, "Social Services Notification" must be filled out and sent to the recipient as per the form instructions.

II. Case Recording

A. In order for the agency to identify case activity and document service delivery, a record of the client's association with the agency is necessary. A record identifies the purpose of the client's association with the Division and documents the ongoing activity of this association. The purposes of case recording are to:

1. provide an initial assessment of the client's condition and situation,
2. develop the case plan and provide documentation of both the services that were authorized and the services that are still needed,
3. track the client's progress and maintain a record of client and client-related contacts,
4. provide a supervisory tool,
5. serve as a mechanism to monitor service delivery,
6. serve as a mechanism to monitor service effectiveness,
7. provide information about the cost of services,
8. provide a tool for terminating the client's association with the Division,
9. identify the need for community involvement and case management functions,
10. provide information about the case to the receiving office whenever a case is transferred to another District Office.

B. For cases which require an assessment, the Social Service Assessment Forms (Forms 597 and 598) serve as the opening dictation. Any additional recording done when the case is opened is at the discretion of the social worker and Supervisor.

C. Additional case recordings (also known as progress notes) are done monthly on all open, direct service cases and include any changes to the case plan. Each recording is signed by the social worker and supervisor. These signatures infer agreement unless a supervisory note is placed in the record.

D. When an application is withdrawn or denied, a statement concerning the situation and the reason for withdrawal or denial must be recorded.

E. When a CFS or AS protective referral is determined to be unfounded or incomplete, a statement must be entered into the record indicating the reason(s) for that determination.

F. Any exceptions to case recording requirements must be documented in the progress notes and approved and signed by the Supervisor.

III. PROGRESS NOTES

A. Progress notes and case recordings are both terms for the summary of case activity. They represent a periodic summary of activity that has occurred in the case to assist the client in progressing toward his/her goal and also serve as a method of recording case plan changes as appropriate.

B. Progress notes are completed monthly on open, direct service cases, but not on purchased services only cases, foster home studies, or adoption home studies.

A progress note may include the following information as well as any other relevant factors:

1. a brief assessment of the client's condition,
2. an evaluation of the effectiveness of services provided,
3. a summary of contacts with the client,
4. a summary of collateral contacts,
5. adjustments to the case plan, if any
6. any significant events or issues that have emerged,
7. any contacts with contract agency providers,
8. a statement about the outcome of contacts.

IV. The Case Contact Log

A. The Case Contact Log (Form 599) is completed by AS and CFS social workers on all open, direct services cases and also during protective investigations. It is not completed on purchased services only cases, adoptive home studies, or foster home studies. The purpose of the log is to:

1. provide immediate access to the most updated information on case activity.
2. serve as a tool for supervision concerning time management, the form of a contact (whether direct or collateral) and the content of a contact,
3. serve as a tool for dictation.

B. The AS or CFS worker makes an entry onto Form 599 every time he/she has any type of contact on a given case.

C. Forms 599 are kept in the section of the social service file that is reserved for case contact logs. (See page 7 of this SR for further information on the arrangement of social service case files.)

D. The AS or CFS Supervisor is responsible for knowing where each worker keeps the logs for his or her caseload and that the logs are available for review upon request.

E. The log is a permanent part of the case file and must be transferred to the historical file when the case is closed.

V. REDETERMINATIONS FOR SOCIAL SERVICES

A. Redeterminations must be done on all social service cases every six months, (minus one day) whether services are provided by the District Office or by a contract agency.

NOTE: Contract agencies will be informed about the revised six month redetermination policy by letter.

B. During redetermination, a current assessment of the client's/family's situation must be included in the record, with emphasis on any improvement or deterioration. It is essential to reassess the case plan, to incorporate necessary revisions and to revise the case plan when necessary. The case plan must demonstrate that the Division of Welfare's interventions are consciously planned, that they relate to the severity of the problem, and that they are well conceived.

C. Social Service Assessment Forms 597 and 598 do not have to be completed again, but the following redetermination outline must be done. The outline must be completed on colored paper in order to be easily identified in the running record of case activity.

1. Progress Note (include the current month's activity)

2. Social Worker Assessment/Evaluation (Current Status)

a. worker's evaluation of the client/family's condition and functioning.
b. prognosis (anticipated success or failure and to what degree).

3. Case Plan Revision

a. Goal (the understanding between the client/family and the worker about the purpose of the Division's involvement).

b. Services to be provided (specify which service(s))

(1) Direct Services

(a) Frequency - the specific number of visits per month
(b) Duration - the length of time the case will be open

(2) Vendored Services

(a) Frequency - the specific number of units per month
(b) Duration - the length of time the case will be

(3) Contracted Services

(a) Frequency - the specific number of units per month
(b) Duration - the length of time the case will be open.

(4) Case Management activities - coordinating and monitoring the involvement of other agencies or individuals in a client's/family's life.

D. Since some AS cases have previously been redetermined once every twelve months, AS social workers must begin identifying these cases in order to establish a six month redetermination date for each case.

VI. Case Closings

A. Before any case is closed, discussion must take place between the client and the social worker and the social worker and the Supervisor. These discussions cover the reasons for and the feasibility of terminating the relationship between the client and the Division of Welfare. The Supervisor must approve the case closings.

A closing summary must be entered into the case recording which provides an account of the outcome of the case. The social worker evaluates the case in terms of:

1. the original Social Services Assessment that was completed.

2. whether or not service goals have been met and the reason for that opinion.

3. the status of the case,

4. the results of the last meeting with the client, and the client's assessment of his/her circumstances and of the services provided by the Division.

B. Form 502, "Social Services Notification" must be completed as per the form's instructions and be sent to the client within thirty days of the 1st contact. If the client either refuses to discuss the case closing or cannot be located, Form 502 must be sent to the client's last known address within thirty days of the decision to close the case.

VII. Case Transfers

A. Before transferring a case to another District Office, the social worker:

1. discusses the transfer with the client and the supervisor.

2. dictates a summary into the case record which evaluates case activity as described in the above section on case closings.

3. Includes in the summary any recommendations or key information that could be useful to the social worker at the receiving District Office and which insures continuity of service.

B. When the social worker at the receiving District Office gets the case, he or she is responsible for amending the existing case plan or for developing a new case plan. He or she must also complete Form 502, which notifies the client about the transfer, about the name of the new social worker and about any changes in services to be provided.

VIII. Social Service Case Files

A. The social service planning file is used to maintain the documentation of case activity. The file is divided into sections according to the order described below:

1. Form 599, "Case Contact Log" and Form 61, "Record of Foster Care Placements" which is kept for each CFS placement case.

2. assessment and case planning information, including Forms 597/598, 606 (and accompanying narrative), and 607, and case recording/progress notes.

3. legal documents, authorizations, and releases.

4. court reports,

5. correspondence and reports from other agencies,

6. additional program forms (Forms 502, 801,803 etc...)

SR 84-8
SS Filing + Control Procedu

EXCEPTION: Files for foster homes, adoptive homes, and adoption cases will not be organized according to the above format, but will instead be organized the way they are now.

B. The AS and CFS social workers are responsible for maintaining at their desks all social service files on cases that are in assessment or open status. If State Office staff borrow case files for review purposes, social workers must keep track of which files have been borrowed and to whom they have been given.

Files on foster homes, adoptive homes, and adoption cases are also to be maintained at the social workers' desks.

C. Eligibility files remain centralized (or remain with the case technician when an AP case is open).

D. Closed and historical files remain centralized. Closed files continue to be under the supervision of the District Director.

EQUIPMENT

Supplies of new dictaphones and paper punchers are being distributed to all District Offices to assist them in implementing the policy changes contained in this SR. New case folders have also been ordered but are not available for three or four weeks. When available, the folders will be distributed to all District Offices.

TRAINING

In July, 1983 the Social Services Management Improvement Project Team provided training to all District Offices on the material contained in this SR. No additional training will be given.

MANUAL PAGES AFFECTED

Section 7400 (Case Recording) and Section 7500 (Social Service Case Files) of the SRS Manual are being obsoleted. No changes are being made to other manual pages.

POSTING INSTRUCTIONS

Remove and Destroy	Insert
SRS Manual	SS Manual
Section 7400, "Case Recording", dated 4/76, SR 76-112, 2 sheets	SR 83-92, dated 9/83, 5 sheets, behind ITEM 899
Section 7500, "Social Service Case Files," dated 7/77, SR 77-79, 2 sheets	
Forms Manual	
None	Form 597 and 597(I), dated 9/83 SR 83-92, 5 sheets
	Form 598 and 598(I), dated 9/83 SR 83-92, 7 sheets
	Form 599 and 599(I), dated 9/83, SR 83-92, 2 sheets

DISPOSITION

This SR must be retained behind ITEM 899 of the SS Manual until further notice.

DISTRIBUTION

SR 83-92 is being distributed to all heads of organizational units both at State Office and in the District Offices, to all I&R, AS, and CFS social workers and Supervisors, to all staff in the Office of Social Services, and to all other holders of the SS Manual (a total of 366 copies). The AS, and CFS social workers and Supervisors as well as staff in the Office of Social Services will also receive copies of the forms and instructions with their copies of the SR (a total of 226 copies).

Printed copies of the forms and instructions will be distributed to all holders of the Forms Manual (a total of 47 copies).

STATE OF NEW HAMPSHIRE

INTER-DEPARTMENT COMMUNICATION

FROM: OFFICE OF THE DIRECTOR DATE September 30, 1983

AT (OFFICE) Division of Welfare

SUBJECT: Case Plans and Case Review System For Children In Foster Care

TO: ALL DISTRICT DIRECTORS

ATTENTION: All CFS and AP Supervisors

September 30, 1983
Effective Date

I. BACKGROUND

This SR releases some revisions to the format for case plans developed for children in foster care and to the case review system. These changes are required by HHS Region I to enable the Division of Welfare to conform to Title IV-E regulations. Information that was formerly contained in SR 82-27 ("Implementation of Public Law 96-272, Adoption Assistance and Child Welfare Act of 1980 (Title IV-E)") has also been incorporated into this SR.

The revisions can be summarized as follows:

A. the addition of a requirement concerning preventive and reunification services (which will also become part of the eligibility requirements for foster care payments);

B. clarification of the periodic administrative review and dispositional hearings requirements. Form 519, "Administrative Review Form" and its instructions are also being released.

C. additions to the case plan format. A statement must now be included about preventive services that were provided prior to placement. The section on identification of services to be provided while the child is in placement must cover both the services required in the court order and other services planned by the social worker which will lead to a permanent plan for the child.

D. Definitions of "original placement date" and "permanent plans" have been added to the definitions included with the case plan format.

II. PRE-PLACEMENT PREVENTIVE AND REUNIFICATION SERVICES

A. According to Section 471(a)(15)(A) of PL 96-272, there must be a judicial determination that reasonable efforts have been made to prevent or eliminate the need for removal of the child from his home. (This requirement applies to all children placed in foster care, except for situations where there is imminent danger to the child.

According to Section 471(a)(15)(B), reasonable efforts must also be made to make it possible for the child to return to his home.

This requirement is being added to the requirements for IV-E foster care payments which are contained in ITEM 198 of the PA Manual and ITEM 734 of the SS Manual.

B. A statement about preventive services that were provided must also be included in the case plan (see the attached case plan format).

III. CASE PLANS

A. Within thirty days of being assigned to a case concerning a child in placement, the CFS social worker must develop a case plan for the child. A format for the case plan is attached to this SR. Certain definitions of terms used in the case plan are listed with the format. (This format is to be used instead of the Social Service Assessment Form 598 released by SR 83-92.)

B. The case plan must be done on a separate sheet of paper of a color other than white. (The color of the paper may be whatever color is available in the District Office that can be read easily.

C. The completion of Form 519, "Administrative Review Form", (which may contain changes to services and to the permanent plan for the child) serves as an update to the case plan.

IV. CASE REVIEW SYSTEM

A. Purpose

The purpose of the case review system is to track the progress of children in foster care, to involve all interested parties, especially parents, to make permanent plans for the child, and to update the information contained in the child's case plan. Case reviews must be done on children:

1. who are under the legal supervision of the Division;

2. who are in the legal custody of the Division;

7. The CFS worker must have a copy of the child's case plan available for the CFS Consultant or alternate reviewer to look at. The worker also completes Questions 1-5 of Form 519, "Administrative Review Form" and gives it to the CFS Consultant or alternate reviewer prior to the review.

8. At the beginning of the review, the CFS Field Consultant or the alternate explains the purpose of the review and mentions confidentiality. He or she then sees that the following areas of discussion are covered:

   (a) the case plan for the child, as presented by the CFS worker;

   (b) the continuing necessity for and appropriateness of the placement;

   (c) the extent to which all involved parties have complied with the case plan for the child;

   (d) what progress has been made toward alleviating or mitigating the causes necessitating placement in foster care;

   (e) the likely date by which the child may either be returned to the home or by which another permanent plan will be achieved;

   (f) any modifications to the current case plan, including any new agreements between or responsibilities of any parties involved and,

   (g) areas of disagreement or concern.

9. The CFS Consultant, or alternate reviewer completes the remaining questions on Form 519. The CFS worker then places the original in the case record, gives or sends a copy to the parent(s) as well as copies to any other appropriate person. One copy must also be given (or sent) to the CFS Consultant in the CFS Bureau at State Office.

   NOTE: The original of Form 519 that is placed in the case record serves as an update to the case plan.

D. <u>Conduct of Dispositional Hearings</u>

1. The social worker must request a dispositional hearing on each child's case 12 months after the initial placement and yearly thereafter until the permanent plan has been achieved. The court of jurisdiction is the District Court where custody originated if the parents' rights have not been relinquished or terminated and there is no appeal. If the Superior Court granted custody, then Superior Court continues to be the court of jurisdiction. If both parents' rights have been relinquished or terminated, the court of jurisdiction is the Probate Court unless other arrangements are made by the

2. The dispositional hearing determines "the future status of the child (including, but not limited to, whether:

   (a) the child should be returned to the parent,

   (b) should be continued in foster care for a specified period,

   (c) should be placed for adoption, or

   (d) should, because of the child's special need or circumstances, be continued in foster care on a permanent or long-term basis." (Public Law 96-272, Section 475(5)(C).)

3. Because the time factor is crucial, a date for the dispositional hearing must be requested four to six weeks in advance. The parents should be notified of the date by the court. The child should also be notified if appropriate.

4. Prior to the dispositional hearing, the social worker prepares a court report which addresses the current status of the child and recommendations for future actions.

5. During the dispositional hearing, the social worker and other involved individuals permitted by the court are present to discuss plans for the child. The final court order should incorporate a determination regarding the future status of the child.

6. If the court order contains all of the required information, the District Office sends the CFS Field Consultant a copy. If the court order approves or amends the Division's report to the court, the social worker must send a copy of the court order and the court report to the CFS Field Consultant.

TRAINING

On 9/19/83, training was given to the CFS Supervisors concerning the information contained in this SR. No additional training is planned.

If District Office staff have questions about the policy contained in this SR, they are to contact the CFS Field Consultant assigned to their District Office. If the Consultant is not available, District Office staff are to contact the CFS Assistant Bureau Chief or the CFS Bureau Chief.

MANUAL PAGES AFFECTED

SR 83- will be posted in the Social Services Manual and Form 519 and 519(i) in the Forms Manual.

Certain pages from ITEM 198 of the PA Manual and ITEM 734 of the PA Manual (which are being revised to include the preventive services requirement) will be posted in the PA Manual. Since ITEMS 198 and 734 were recently revised via SR 83-106 (Increase in the Foster Care Standard of Need), and have not yet been printed, the revisions from this SR will be incorporated. When PA Manual holders receive printed copies of these policy ITEMS, with the posting instructions from SR 83-106, the revisions from this SR will therefore be included.

POSTING INSTRUCTIONS

Remove and Destroy	Insert
SS Manual	
SR 82-27, dated 2/82, 5 sheets from behind ITEM 899	SR 83-110, dated 9/83 6 sheets, behind ITEM 899.
Forms Manual	
None	Form 519 and 519(I), dated 9/83, SR 83-110,3 sheets.

DISPOSITION

This SR must be retained behind ITEM 899 of the SS Manual until further notice.

DISTRIBUTION

SR 83- is being distributed to all heads of organizational units both at State Office and in the District Offices, to staff in the CFS Bureau, to all CFS social workers and Supervisors, and to all other holders of the SS Manual. (A total of 325 copies).

Copies of Form 519 and 519(I) will be given to all staff in the CFS Bureau and to all CFS workers and Supervisors with their copies of the SR (170 copies) and also to all holders of the Forms Manual (47 copies).

Initial supplies of Form 519 will also be distributed to all District Offices.

CASE PLAN FORMAT

The following items must be included in the case plan for a child in placement. The main headings are areas that must be addressed. The subheadings represent factors the worker may consider in formulating a case plan, depending upon the circumstances surrounding the case. Definitions of certain terms are included.

A. General Information

1. Child's name
2. Date of birth
3. Individual number
4. Parent(s)' names and present location
5. Legal Status
6. Original date of placement
7. Location (town) and date of child's current placement.

B. Brief summary of events or factors which lead to child's placement, including preventive services that were provided.

C. Statement of goals for child and family

1. long and short-term goals for child and family

2. factors relevant to case decision

   a. if child is to be returned to his family, list conditions that must be met by the family anld/or the child

   b. if there are other permanent plans, list the factors considered in this decision.

3. describe present circumstances and any improvements since the last court or administrative review.

D. Description of parents' and child's involvement with the case plan.

E. Identification of services to the child, family, and foster parents. (This section covers both services required in court orders and other services planned by the CFS worker which will lead to permanency for the child.)

1. visits between parents and child
2. plan for and purpose of worker's visits to child and family
3. supportive work with foster parents
4. other services being provided and
   a. results of services already provided
   b. planned changes in any services
   c. expected outcome of service delivery

SR 84-50

STATE OF NEW HAMPSHIRE

INTER-DEPARTMENT COMMUNICATION

DATE JUN 15 1984

FROM OFFICE OF THE DIRECTOR **AT (OFFICE)** Division of Welfare

SUBJECT Social Services Filing and Control Procedures

TO All Regional Administrators

Attention: All CFS and AS Supervisors

JUN 15 1984

EFFECTIVE DATE

This SR releases policy regarding social service file maintenance and control/communication procedures between Assistance Payment (AP) and Social Services (S.S.). If there is a conflict between this SR and current policy, the statements contained in this SR will prevail.

File Maintenance

1. In Social Services only cases, the Form 801, "Case Action Order", will be filed and retained in the Services record. No eligibility record will be made. Do not use a hole puncher on the current 801.

   a. If there is presently an eligibility file for a social services only case, the material may be interfiled with the social services record. (If there is a closed AP eligibility file, do not interfile.)

   b. Form 803, Social Service Form shall be retained in Section 6 of the record. If the case is social services only, the 803 can be destroyed.

   c. The application Form 800 (or copy) is also kept in Section 6 of the record. Per present policy, the application and attendant forms are kept for the current and prior eligibility periods.

   d. For length of retention on other service forms, there is a retention period on every instruction to the forms. These instructions are in the Forms Manual. Dictation, progress notes, correspondence, court reports, etc. are kept indefinitely in the services record.

2. Social workers will be responsible for maintaining up-to-date, orderly records and will be accountable for the whereabouts of each record assigned to them. "Out" cards will be used to replace records that have been borrowed.

3. Current (for the present month) Forms 599, "Case Contact Logs", may be kept at the worker's desk or in the file, at the discretion of the Service Supervisors. All completed Forms 599 will be filed in the case record.

4. Following is a detailed outline for case record format. The record is still divided into six sections. Please note: There have been no changes from the outline in SR 83-92, "Social Services Management Improvement Project."

   Section 1. Form 599, "Case Contact Log," and Form 61, "Record of Foster Care Placement."

   Section 2. Assessment and case planning information, including Forms 597/598, "Social Services Assessment Forms;" Forms 606/607, "Protection Investigation Forms;" Form 519, "Administrative Review Form;" and case recording/progress notes.

   Please note: The Forms 606/607 should be easily accessible for removal from the file when the record is being reviewed by an outside party.

   Section 3. Legal documents such as court orders, petitions, decrees, motions, birth certificates, social security numbers, relinquishments, appointment of surrogate parent, and any other information of a legal or permanent nature; all authorizations for medical care, placement, out-of-state travel; all releases of information.

   Section 4. All court reports, including those of the Division, guardian ad litem, or any other agency submitting a report to the court.

   Section 5. Correspondence and reports from other agencies, including educational progress reports, psychiatric/psychological reports, medical reports, police reports, etc.

   Section 6. All other social services program forms other than those mentioned in preceding sections. These include but are not limited to: Form 800, "Application" or copy; Form 502, "Social Services Notification/Authorization;" Form 506, "Social Services Vendor Statement;" Form 803, "Social Service Form;" etc.

5. The above format does not apply to Adoptive Home records or Foster Home records. These records will be maintained in the format that is currently used.

Control Procedures

1. At present there is clerical staff at each District Office whose duties include assignment of case numbers and photostating of Form 800 for Social Services use. It is not the intention of this policy to change procedures currently in operation.

2. When a client applies for social services, the receptionist will refer the client to the Social Services Intake Social Worker.

3. If the client is applying for AP and SS at the same time, the Intake Social Worker will complete Form 806, "Intake Summary," complete Form 803 to pend, send Form 803 to the assigned technician, and refer the case to the appropriate services supervisor. The supervisor should receive the Form 806 and a copy of the Form 800, in accordance with present procedures at each District Office.

F. Appropriateness of placement. Consider the following factors:

1. type of facility
2. least restrictive setting
3. close proximity to parents
4. child's best interests
   a. whether the advantages of the placement outweigh the disadvantages
   b. how child has adjusted to his present foster home
5. child's special needs
6. number of previous placements and the reasons for the move
7. If the child cannot return home, address the present foster parents desire to provide a permanent home and the appropriateness of such a plan.

G. Long range plan and target date

1. If the plan is to return the child home, give the date of proposed return.

2. If long term foster care is the plan, state the reason(s), specifically addressing,

   a. the needs of the child
   b. circumstances that do not allow other permanent plans.

Definitions

Close Proximity to Parents - a placement nearest the home community or residence of the child's parent(s) or legal guardian(s) that is consistent with the child's best interest and special needs. Factors to be considered include the ease with which the child and the family may visit each other and the availability of services the child may require.

Original Date of Placement - the date of the child's most recent removal from his home and placement into foster care under the care and responsibility of the state agency. This definition is the point in time used in calculating all time periods relating to the case review system.

Permanent Plan - any one of the following plans that may be chosen for a child in foster care:

1. return home
2. adoption
3. guardianship by a relative or other person
4. permanent foster care (contracted foster care)
5. Independent living or
6. some other appropriate arrangement.

Placement in the Least Restrictive Setting - the most family-like setting that can provide the environment and services needed to serve the child's best interests and special needs. In order of consideration this means placement with relative(s), foster family care, group home care and institutional care.

Special Needs - the medical, psychological, emotional or social needs which exceed those of a child of normal development, and which should be given primary consideration while considering placement in the least restrictive setting, close proximity to parents, and the continuing need for placement.

3. who are under the guardianship of the Division;

4. who are in the Division's guardianship through termination of parental rights;

5. who are in the Division's guardianship through relinquishment;

6. for whom there is a voluntary placement agreement.

B. Types of Reviews

There are two types of reviews; periodic administrative reviews and dispositional hearings.

1. All children in placement with whom the Division of Welfare has a legal or voluntary placement relationship must have a periodic administrative review every six months. If the child still needs to be in placement after the first six months of voluntary care, the case must be:

   a. taken to District Court on a neglect petition or

   b. If the voluntary placement was made for purposes of adoption, the case must be taken to Probate Court to obtain guardianship of the person.

2. Periodic Administrative reviews must meet the criteria for the periodic review which appear in Section 475(5)(B) of PL 96-272 (see page 4 of this SR for further details on the conduct of periodic administrative reviews.).

3. Dispositional hearings must take place in the court of jurisdiction and must be held twelve months after the initial placement and every twelve months thereafter. The dispositional hearing must meet the criteria contained in Section 475(5)(C) of PL 96-272. (See pp. 5-6 of this SR for further details on the conduct of dispositional hearings).

4. If the dates of the dispositional hearing coincide with the dates of the periodic administrative review, the dispositional hearing may replace the periodic administrative review. However, periodic administrative reviews must not replace the dispositional hearing.

5. The dispositional hearing also meets the requirements of RSA 169-C:24, which requires a yearly review of the status of children who are not in the custody of their parents.

C. Conduct of Periodic Administrative Reviews

1. Periodic Administrative Reviews take place at the District Office. They are informal and open discussions regarding plans for the child, and must determine the continuing necesssity for and appropriateness of the placement, the extent of compliance with the case plan and the extent of the progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care. A date must also be projected by which the child may be returned to the home, be placed for adoption or legal guardianship, or fulfill some other permanent plan (see the definition of permanent plan that is included with the case plan format.

2. When more than one child in a family needs to be reviewed, all the children may be reviewed at the same time, provided that the case plan is the same for each child. If the case plans are different, separate administrative reviews must be done.

3. The periodic administrative review is conducted by a panel, one member of which may not be involved in the direct delivery of services. For the purposes of this policy, a CFS Field Consultant or an alternate functions as the person who is not involved in the direct delivery of services (see #4 below). The Consultant is the primary reviewer and is responsible for moderating discussions. The other members of the panel are the CFS Supervisor and the CFS social worker.

   Representatives from community agencies who have been involved in the case may be asked to serve on the panel. However, the primary reviewer is always the CFS Field Consultant or the alternate (see #4 below).

4. Each District Office arranges with the appropriate CFS Field Consultant to conduct administrative reviews. However, an alternate person must be chosen to conduct the review if the Consultants cannot attend. The alternate must be a Division of Welfare staff member who is not involved in the direct delivery of services to the child or parents being reviewed. The alternate can be an appropriate supervisor who meets the criteria described in #3 above. The District Office must discuss prospective alternates with the Consultant prior to making a choice.

5. The child's parent(s) must be invited to the review at least two weeks prior to the review date. However, even if they do not attend, the review must take place. The parent(s) may elect to have a representative at the review.

6. The child may be present at the review if age is appropriate, and if other factors do not contraindicate his presence. Any other interested persons may be present if the CFS worker feels this is appropriate.

PD 85-19

STATE OF NEW HAMPSHIRE

Inter-Department Communication

FROM: Office of the Director

DATE: September 23, 1985

AT (OFFICE): Division for Children and Youth Services

SUBJECT: Foster Child Care Plan Revisions

TO: ALL BUREAU ADMINISTRATORS
Attention: Supervisor and Assistant Supervisors

September 30, 1985
Effective Date

This PD releases some revisions to the format for caseplans for children in Foster Care. These changes are required by federal regulations under Titles IV-B and IV-E. By issuing this PD, DCYS will pass administrative requirements for federal fiscal year 1985. (A case review will determine if we are in full compliance with federal regulations for 1985.) This PD supplements SR 83-110.

Summary of Revisions

1. The caseplan must be made available to the parent or guardian of the foster child.

2. The caseplan must be developed no later than 60 days from the date the child is put into placement.

3. The caseplan must include a discussion of how the plan is designed to achieve a placement in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) consistent with the best interest and special needs of the child. For example, the caseplan will describe that a child was placed temporarily in a group home because that was the only placement available and the plan is to move the child to a foster family home close to the child's family as soon as a foster family can be identified

4. The caseplan must include a description of the services offered and provided to prevent removal of the child from the home and to reunify the family.

CASEPLANS

Timing

Within 30 days of being assigned to a case concerning a child in placement and within 60 days after the child is put into placement, the DCYS social worker must develop a caseplan for the child.

Format

1. A brief summary of events or factors which led to the child's placement. This must include a description of: a) services offered and/or provided to prevent the removal of the child from the home, and; b) services offered and/or provided to reunify the family.

2. Statement of goals for child and family and the plan for implementing court orders. Describe the parent's and child's involvement with the caseplan.

3. The caseplan must be made available in writing to the child's parent(s) or guardian(s) and to the child, if appropriate. If the parent(s) or guardian(s) are not interested in the caseplan, this should be noted in this part of the Caseplan Format.

4. Appropriateness of Placement. The caseplan must include a discussion of how the plan is designed to achieve a placement in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s), consistent with the best interest and special needs of the child.

Forms

No forms are provided at this time. Implementation of this policy may indicate a need for forms in the future.

POSTING INSTRUCTIONS

Remove and Destroy	Insert
DCYS Manual	Insert PD 85-19 immediately before SR 83-110.
None	

TRAINING

No formal training will be provided. Supervisors have been briefed by state office staff and will provide guidance to District Office staff as needed.

DISPOSITION

Retain this PD with SR 83-110 in the DCYS Manual until further notice.

DISTRIBUTION

This PD is being photocopied for all holders of the DCYS Manual.

DAB/JR:ljk

4. If a client is applying for social services only, the Intake Social Worker will complete Form 806, pend Form 801 after case number assignment, and refer the case to the services supervisor.

5. If a client is already receiving assistance payments or food stamps and has now decided to apply for social services, the intake social services, pend the 803 and sent it to the technician, complete Form 806, and refer the case to the services supervisor.

6. If a client is presently receiving social services and wishes to apply for assistance payments or food stamps, the client is referred to the receptionist for AP intake.

Training

No formal training will be provided. The Regional Administrators will be available to help with interpretation or implementation.

Posting Instructions

Remove and Destroy	Insert
SS Manual SR 84-8, dated 4/9/84, 3 sheets, in front of ITEM 601.	SR 84-50 , dated sheets, in front of ITEM 601.

Pen and Ink Change

SS Manual

On page 7 of SR 83-92, "The Social Services Management Improvement Project" (now retained in front of ITEM 601, "General Eligibility Procedures"), cross out the statement in the left-hand margin referring to SR 84-8, and write in "See SR 84-50 "Social Services Filing and Control Procedures."

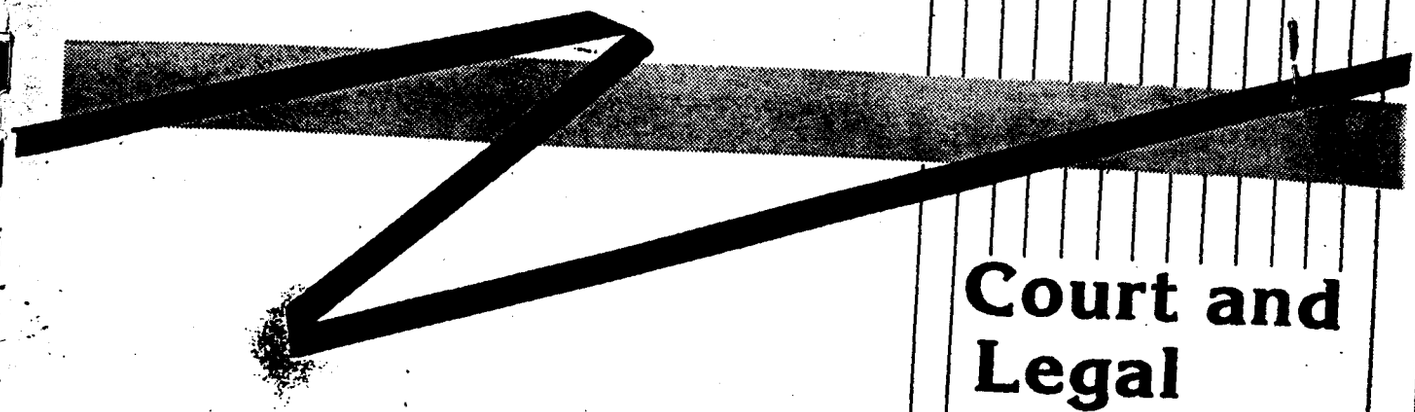
Disposition

This SR must be retained in the Social Services Manual in front of ITEM 601 until further notice.

Distribution

This SR is being photocopied for distribution to all heads of organizational units, district offices, and all holders of the Social Services Manual.

OSS/NA/gc



Court and Legal Handbook

Developed under contract with the N.H. Division for Children and Youth Services

By
Alex Komaridis, Esq.