



Winning Adjudication Trials



Choice Points

- To plea or not to plea
- Type of plea (admissions v no contest)
- Plea to an amended petition?
- Trial before judge/jury/referee
- Appealing adverse decisions
- Remain client-centered at all times



Before you make any decisions

- Review the petition closely
- Obtain and review all discovery
- Conduct your own independent investigation
- Thoroughly review all documents
- Talk to key witnesses, caseworkers, LGAL and others
- Consult attorneys in collateral proceedings (criminal, immigration)



Why plea?

- You have a weak case
- Control flow of information to the court
- Create momentum in your case
- Avoid unnecessary delays
- Focus on the future, not the past



Why go to trial?

- You have a strong case
- You'd like an opportunity to present your client's story to the court
- Influence how the court and others perceive your client, even if you lose at trial
- Ultimately, this is your client's decision. Your job is to advise them of their options and make a recommendation



Plea – MCR 3.971

- Admissions v no-contest
- Court must establish support for finding that one or more of the statutory grounds alleged in the petition are true
- Even if true, substantiated allegations must also meet standard of MCL 712A.2(b).
- Court must advise client of the procedural rights they are waiving, including the consequences of the plea
- Ask court permission to establish factual basis by questioning your client. Maintain control



No contest plea – special considerations

- Court cannot question the respondent but must establish factual basis through other means.
- Court must state why a plea of no contest is appropriate – e.g. fear of criminal or civil liability.



Negotiating the plea

- Strike irrelevant allegations
- Eliminate allegations your client contests
- Negotiate the dispositional plan while resolving the plea
- You can propose a plea to an amended petition even if the other parties object. MCR 3.971(A) (“court has discretion to allow a respondent to enter a plea of admission or a plea of no contest to an amended petition.”).



Basics of the Adjudication Trial

- Right to trial before judge, jury or referee. MCR 3.911, MCR 3.912, MCR 3.913
- Dep’t must prove, by a preponderance of evidence, that one or more allegations are true **and** establish grounds for jurisdiction under MCL 712A.2(b)
- Rules of evidence APPLY. MCR 3.972(C)(1)



Before trial

- Review MCL 712A.2(b)
- Review discovery
- Conduct independent investigation
- Talk to ALL witnesses, good and bad
- Prep your witnesses for both direct and cross-examinations
- Develop working theory of the case. Don't accept their narrative. Create your own story.



Evidentiary issues



Where to focus?

Litigate facts drawn from the language of the statutory provisions alleged in the petition.

**Child's statements –
MCR 3.972(C)(2)**

- Statement made by child under 10 or an incapacitated individual under 18 with a developmental disability
- Statement regarding an act of child abuse, child neglect, sexual abuse or sexual exploitation performed with or on the child
- Court must find, in a hearing held before trial, that the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness.

Minor Parents and Poverty Cases

- There is no language in jurisdiction statute for “dependency.”
- Litigate the facts under MCL 712A.2(b)(1)
 - “... when able to do so, neglects”
 - “without proper custody or guardianship” -- MCL 712A.2(b)(1)(B)
- Advocate for probate guardianship
 - Reasonable Efforts

Criminal History Alone Is NOT Enough

- MCL 712A.2(b)(2) –
 - Criminality must be linked to abuse/neglect of the child. See *People v Tennyson*, 487 Mich 730 (2010) (“even criminality in the home, per se, is insufficient to support a finding of neglect.” Child’s presence in the home is not enough.)
 - Substantial risk of harm must be to child’s *mental well-being*.



Common evidentiary issues

- Relevance
- Hearsay/Lack of personal knowledge
- Foundation – can't tell whether witness has personal knowledge
- Invalid expert testimony – see MRE 702
- Improper foundation to admit documents, which are hearsay unless an exception applies.



Trial skills – Direct Exam Review

- Non-leading, open-ended questions
- Let the witness tell the story
- Start questions with who, what, where, when, why and how. Avoid asking yes/no questions.
- Elicit details. Details win cases!



Trial skills – Cross-Examination

- Ask leading statements.
- Ask leading statements that the witness will agree to
- Never ask a question you don't know the answer to
- Base cross examination questions on reports written by the witness
- One fact per statement



Example – cross examination

- You are the caseworker, correct?
- You supervised parenting time between my client and the child
- My client appeared on time to every visit
- And she played with her child
- She changed her diaper
- She fed her a bottle
- She brought toys to play with



But avoid the one question too many

- So you would agree that my client is an excellent parent.



Impeachment Script

- After each visit, you record your observations in a report.
- And what you wrote in that report is accurate
- It's important for that information to be accurate because others rely on that information
- Like your supervisors, the attorneys and the parties



Impeachment Script

- Mark the document
- Approach the witness
- I'm showing you what has been marked as Respondent's Exhibit I for identification purposes.
- This is the visitation report, correct.
- On pp 3 of the report, you wrote, "Mother brought toys to play with."



Closing Arguments ---What Does the Statute Say???

- Cite the statute and read **VERBATIM!**
 - Incorporate the evidence in closing and apply the law to the facts established by the evidence.
 - Don't allow common practice and court culture to substitute for the law and proper procedure!



If you lose, do you appeal?

- You can appeal the adverse adjudication finding in an appeal of the initial dispositional order. MCR 3.993(A)(1)
- Very few adjudication appeals take place
- The appeal will likely take 8 months to a year to resolve
- Need to consider how the appeal will impact any momentum in the case
- Need to consider the merits of the appeal – did the trial court commit any legal errors
Challenges to factual findings are difficult to win
- Ultimately, this is the client's decision. Your job is to present options and advise



Special Considerations – Non-Respondent Parents

- Read *In re Sanders*, 495 Mich 394 (2014)
- Non-respondent parents are parents against whom no allegations of unfitness have been made
- They are entitled to custody of their child
- If allegations are made against them, they are entitled to the same procedural rights of the other parent
- If you represent an NRP and the Dep't refuses to release the child to your client's care, immediately file a motion. The Dep't must either make allegations and prove them at a trial or place the child with the NRP.
