

# **YOU CAN DISAGREE WITHOUT BEING DISAGREEABLE: BUT WHAT IS DISAGREEABLE?**

**Washington Association of Child Advocate Programs 30<sup>th</sup> Annual  
Statewide Conference, October 23-24, 2023, “Roots Run Deep”**

Amelia Watson, Lead Managing Attorney

Marci Comeau, Managing Attorney

Washington State Office of Public Defense, Parents Representation Program



# LET'S CHAT ABOUT:

Why are you a child advocate or otherwise involved in the child welfare system?



# LET'S CHAT ABOUT:

In one word, describe your interactions with parents' attorneys in your counties.



**LET'S CHAT ABOUT:**

**If you had to hire a  
lawyer, what qualities  
would you look for?**



# WORKSHOP OVERVIEW

- Role of the Parent's Lawyer

- Why Does the Parent's Attorney Do That?

- ✓ Ignore the Child's Best Interest

- ✓ Contest Dependency Fact-Findings

- ✓ Contest Services/Visitation Issues

- ✓ Contest Termination of Parental Rights

- ✓ File Appeals

- ✓ File Motions for Discretionary Review

- ✓ Discourage Therapeutic Court

- ✓ Use Independent Experts

- ✓ Ignore Finances of DCYF

- ✓ Restrict Communications with Parent

- ✓ Personally Attack Me in Court

- Disagreeable... or Doing Their Job?

- Questions!







# THE ROLE OF THE PARENT'S ATTORNEY



**“SO YOU WANT TO BE A PUBLIC DEFENDER? DON'T DO IT FOR THE MONEY, THERE ISN'T ENOUGH. DON'T DO IT FOR PRESTIGE, YOU WON'T GET ANY. DON'T DO IT FOR THE THRILL OF VICTORY, VICTORY RARELY COMES. DO IT FOR LOVE. DO IT FOR JUSTICE. DO IT FOR SELF-RESPECT. DO IT FOR THE SATISFACTION OF KNOWING YOU ARE SERVING OTHERS, DEFENDING THE CONSTITUTION, LIVING YOUR IDEALS.” CAROL A. BROOK**

## **PUBLIC DEFENSE VALUES**

I am a public defender.

That isn't a job description.

That is my identity.

-Melody Dernocoeur  
Memphis Public Defender







# **WE STAND FOR**

**TRUTH JUSTICE AND FAIRNESS  
THE PRESUMPTION OF INNOCENCE  
CLIENT-CENTERED JUSTICE SYSTEMS  
SAFEGUARDS AGAINST THE ABUSE OF POWER  
POOR PEOPLE AND OPPRESSED COMMUNITIES  
THE CONSTITUTION AND THE BILL OF RIGHTS  
INHERENT DIGNITY OF EVERY PERSON  
OPPORTUNITIES FOR SUCCESS  
THE END OF RACISM HOPE**

# **STAND WITH US**









# WASHINGTON STATE OFFICE OF PUBLIC DEFENSE



- Larry Jefferson, Director
- Sophia Byrd McSherry and Katrin Johnson, Deputy Directors
- OPD Parents Representation Program
  - Brett Ballew, Lead Managing Attorney, [brett.ballew@opd.wa.gov](mailto:brett.ballew@opd.wa.gov)
  - Amelia Watson, Lead Managing Attorney, [amelia.watson@opd.wa.gov](mailto:amelia.watson@opd.wa.gov)
  - Darren Acoba, Managing Attorney, [darren.acoba.@opd.wa.gov](mailto:darren.acoba.@opd.wa.gov)
  - Marci Comeau, Managing Attorney, [marci.comeau@opd.wa.gov](mailto:marci.comeau@opd.wa.gov)
  - Lisa Dabalos-McMahon, Managing Attorney, [lisa.dabalos-mcmahon@opd.wa.gov](mailto:lisa.dabalos-mcmahon@opd.wa.gov)
  - Jacob D'Annunzio, Managing Attorney, [jacob.dannunzio@opd.wa.gov](mailto:jacob.dannunzio@opd.wa.gov)
  - Michael Heard, Lead Managing Social Service Worker, [michael.heard@opd.wa.gov](mailto:michael.heard@opd.wa.gov)
  - Shrounda Selivanoff, Managing Social Service Worker, [shrounda.selivanoff@opd.wa.gov](mailto:shrounda.selivanoff@opd.wa.gov)
  - Tonia McClanahan, Parent Voice Advocacy Manager, [tonia.mcclanahan@opd.wa.gov](mailto:tonia.mcclanahan@opd.wa.gov)
  - Ryan Siu, Paralegal, [ryan.siu@opd.wa.gov](mailto:ryan.siu@opd.wa.gov)
  - Christopher Grande, Legal Assistant, [christopher.grande@opd.wa.gov](mailto:christopher.grande@opd.wa.gov)
  - Jason Aguero, Legal Assistant, [jason.aguero@opd.wa.gov](mailto:jason.aguero@opd.wa.gov)



# OPD SUPPORT AND OVERSIGHT

- OPD contracts with attorneys and social service workers in all 39 counties in Washington State.
- Six managing attorneys and three social service managers.
  - Support 290 attorneys and social service workers.
  - Which manager is assigned to my county? See the OPD Managing Attorney and Social Services Manager County Maps!
- Monitor for contractual compliance.
- Provide technical assistance, training, access to expert services.
- Parent attorneys are independent contractors, not employees of OPD.



# ROLE OF THE PARENT'S ATTORNEY

*Attorney's duties and responsibilities described in **Rules of Professional Conduct (RPC)***

## **“Representative of the client”**

- Advisor- provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications;
- Advocate- conscientiously and ardently asserts the clients position under the rules of the adversary system; and
- Negotiator- seeks a result advantageous to the client but consistent with honest dealings with others.





# ROLE OF THE PARENT'S ATTORNEY

## Specific Duties to Client:

- Client Directed Representation- an attorney must abide by a client's decisions concerning the objectives of representation
- Confidentiality- an attorney shall not reveal information relating to the representation of a client unless the client gives informed consent
- Render Candid Advice- in addition to the law, such advice can be moral, economic, social or political in nature
- Client with Diminished Capacity- as far as reasonably possible, an attorney must maintain a normal client-lawyer relationship with the client





# WHY DOES THE PARENT'S ATTORNEY DO THAT?



# WHY DOES THE ATTORNEY...IGNORE THE BEST INTEREST OF THE CHILD?

- Common times when you wonder this: placement, visitation, or when the permanent plan is at issue
- **The parent's attorney's job is pursue the goal established by *the parent*. That goal may or may not align with other parties' positions on what is in the best interest of the child.**
  - Attorney may have a different take on what is in the child's best interest OR
  - Attorney may have the same take on what is in the child's best interest.

*Remember confidentiality: an attorney shall not reveal information relating to the representation of a client unless the client gives informed consent.*



# WHY DOES THE ATTORNEY...CONTEST THE DEPENDENCY FACT FINDING HEARING WHEN IT IS APPARENT TO ME THE COURT WILL FIND THE CHILD DEPENDENT?

- The parent has a constitutional right to contest.
- The parent and/or attorney believe the parent is fit.
- Parent wants to contest *basis* for dependency: (a) abandonment, (b) abuse or neglect; or (c) no parent capable.
- Facts matter!
  - ✓ Parent contests specific allegations and ***facts matter to parents.***
  - ✓ Facts matter to parent's attorney. Services and evaluations are tied to identified deficiencies.
  - ✓ Facts matter to courts. Dependency trial helps get to the "why" of the dependency case and helps to establish a clear service/reunification plan.
  - ✓ Facts matter to DCYF. DCYF has a duty to maintain accurate records.

***Contesting can be the key to parent engagement!***





# WHY DOES THE ATTORNEY...CONTEST A FACT FINDING WHEN THEY HAVE NO CLIENT?

- Client has a right to contest even if not present.
  - A parent may appear for fact-finding through their attorney.
  - Recent contact? Client direction? Have not withdrawn?
- Client-directed representation: an attorney must abide by a client's decisions concerning the objectives of representation.
- *In re the Welfare of J.M.*, 130 Wn. App. 912 (2005). Parent facing TPR entitled to “meaningful hearing,” including “effective representation of counsel.” TPR overturned where mother’s counsel did not object to written reports from non-testifying expert. *See also In the Matter of the Dependency of V.R.R.*, 134 Wn. App. 573 (2006) and *In re the Dependency of: G.A.R.*, 137 Wash.App. 1 (2007).
- *In re Welfare of X.T.*, 174 Wn. App. 733 (2013). Error for court to order dependency based largely on unsworn hearsay.



# WHY DOES THE ATTORNEY... FILE MOTIONS/CONTEST ISSUES SUCH AS SERVICES AND VISITATION?

- Parent has a right to remedial services that are tailored to the parent's unique needs.
- Parent should be involved in developing their service plan.
- Parent or attorney may view service or evaluation as unnecessary or to be a "fishing expedition."
- Parent's visits cannot be limited as a sanction for failing to complete services.
- Remember HB 1194: visits are presumed to be unsupervised!
- Visits are good for children even when reunification is not possible.
- Sometimes, filing motions, or contesting, is necessary to remove barriers to services or visits.



# WHY DOES THE ATTORNEY...CONTEST A TPR WHEN IT APPEARS THE PARENT HAS NO POSSIBILITY OF WINNING?

- Parent has a constitutional right to contest.
- Parent and/or attorney may think the parent is fit.
- Parent and/or attorney may think TPR is not in the child's best interest.
- "I don't want my child's birth certificate changed."
- "I don't want my child seeing an order that I signed away my parental rights. I want my child to know that I didn't give up on getting them back."



# WHY DOES THE ATTORNEY...APPEAL A TPR WHERE THERE IS APPEARS TO BE NO POSSIBILITY OF WINNING?

- Parent's attorney has a duty to file an appeal to a TPR if directed to do so by their client.
- TPR cases deemed the 'death penalty' of civil litigation. Every avenue has to be explored.
- Unlike criminal cases, an appellate attorney may not file a brief seeking withdraw from a termination of parental rights appeal that is frivolous unless the parent consents to withdraw. *In the Matter of the Welfare of Hall, 99 Wn.2d 842 (1983)*.
- Some TPR decisions are overturned – and on a variety of grounds.
- Follow-up issue: “Yes, but appeals take so long.”
  - Parents' attorneys don't like that it takes so long either!
  - Dependency and TPR appeals are accelerated reviews.





# WHY DOES THE ATTORNEY...FILE MOTIONS FOR DISCRETIONARY REVIEW (FOR EXAMPLE, FROM AN ORDER DENYING OR SUSPENDING VISITATION)?

- Some important decisions are made at motion/review hearings.
- The parent may not agree with those decisions and want the issue appealed.
- If the issue (such as visitation) is not appealed now, it may not be appealable later.
- “If a parent wishes to challenge the propriety of the underlying dependency order limiting visitation, he or she must do so in an appeal of the disposition order or a petition for discretionary review of other orders entered by the dependency court.” *In the Matter of the Dependency of T.H.*, 139 Wn. App. 784 at 793 (2007).



# WHY DOES THE ATTORNEY...DISCOURAGE CLIENTS FROM ENTERING THERAPEUTIC COURT?

- Parent's stated goals may be incompatible with therapeutic court:
  - Parent wants to contest the fact finding;
  - Parent denies drug use.
- Parent's disposition may be incompatible with therapeutic court:
  - Must have buy-in to team approach.
- Attorney believes parent has a better chance at reunification outside of therapeutic court.



# WHY DOES THE ATTORNEY... USE INDEPENDENT EXPERTS OR EVALUATIONS?

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



# WHY DOES THE ATTORNEY...IGNORE THE FINANCIAL REALITIES OF DCYF?

- Vast majority of parents qualify as indigent.
- DCYF has identified the service as necessary to address parental deficiency.
- Parent has been found to need those services to get the child back.
- Attorney questions whether the State does not have funds for that service:
  - State has the burden to establish that they don't have funding for a specific service or evaluation;
  - Additional months of child in foster care vs. paying for service today. Early provision of services increases likelihood of case resolution and permanency;
  - Findings of availability of services go to findings in termination proceeding.
- DCYF contract not relevant to whether a service is needed.





# WHY DOES THE ATTORNEY...ADVISE THE PARENT NOT TO DISCUSS A PARTICULAR ISSUE WITH ME OR SPEAK WITH ME COMPLETELY?

- Parents are entitled to communicate through their attorney.
  - Potential of criminal charges may demand that attorney advise parent to remain silent so the parent does not incriminate themselves.
  - There will likely be a contested fact finding.
  - Often parents are understandably upset.
  - There are conflicting reports of what is being said.
- Family time is for family.



# WHY DOES THE ATTORNEY...PERSONALLY ATTACK ME IN COURT?

- Disclaimer: RPCs prohibit personal attacks on you. If I am *personally attacking* you in court, your attorney or the judicial officer should be calling me to task.
  - Does the attorney perceive it as a personal attack or zealous advocacy?
- Attorney's duty to attempt to achieve parent's stated goals can vary from case to case or even within a case.
- Why does attorney ask for no reasonable efforts finding or sanctions?
  - ASFA results in parents being in a race against the clock.
  - Tools attorneys can use to have court encourage the case to move.
  - Evidence for the termination proceeding.



## HOW IT CAN FEEL: WHAT WE HEAR FROM PARENTS

“I remember going to court and doing a termination [of parental rights case] and I felt like I was a piece of meat and the sharks were swimming around me and taking little pieces out of me. And then I remember when had a break and one of the attorneys said, **‘I don’t know why you’re taking this personally.’”**

- Suburban Child Welfare Worker

Vandervort et. al, “Legal ethics and high child welfare worker turnover: An unexplored connection,” Children and Youth Services Review 30 (2008) 546-63.





**DISAGREEABLE . . . OR  
DOING THEIR JOB?**





# DISAGREEABLE...OR DOING THEIR JOB?

At a motion hearing, the parent is asking that the child be transitioned home. The GAL gives an oral report to the court at the hearing. The GAL did not get a chance to see the child prior to the hearing because the child is placed out of county and not much has happened. She did talk to the foster parent on the phone who said the child was doing fine. The GAL's opinion is that the child should not be transitioned home at this time because she is worried about the parent's stability. At the motion hearing, the parent's attorney spends a great deal of time arguing that the GAL has done a terrible job investigating this case and tells the judge that the GAL is incompetent.



# DISAGREEABLE...OR DOING THEIR JOB?

The child is in foster care. At a visitation, the child asks parent, “why did you get kicked out of treatment?” The parent asks, “Who told you that?” The child says, “Mama Louise. She is going to be my new mommy now.” The parent attorney subpoenas the social worker, the GAL, and Mama Louise (the foster parent) for depositions. The attorney asks some personal questions in order to try to determine who gave the foster parent the information, what other information has been passed along, whether the Mama Louise is sabotaging the relationship between the parent and child, and whether the social worker and/or GAL made any promises to Mama Louise about being able to adopt the child.



# DISAGREEABLE...OR DOING THEIR JOB?

A Native American child is placed with white foster parents. After two years, the parent does not make any progress in services. The child is doing very well in the foster home and the foster parents want to adopt. The GAL feels that this is the best placement for this child. A Native American relative is identified late in the process and the parent wants placement with that relative. The GAL testifies at the hearing, and the parent's attorney questions the GAL aggressively about the GAL's income level, education, family status and upbringing, and whether the GAL lacks cultural sensitivity or is biased against Native Americans in some way. During argument, the parent's attorney argues that the GAL's white privilege has clearly clouded the GAL's judgment.



# **DISAGREEABLE...OR DOING THEIR JOB?**

There is a FTDM to plan the return of a child to her mother. The mother had satisfactorily completed all services. The meeting begins with a reminder for why the child was placed into care. The social worker reads from the petition and mentions all of the horrible things that brought the child into care. The mother's attorney's face keeps getting redder and redder as the social worker details every last bit of the mother's history. Finally, the attorney stands up and shouts, "THERE IS A REASON THEY CALL YOU THE BABY SNATCHERS! I AM TIRED OF YOU ALL RUBBING MY CLIENT'S NOSE IN EVERY BAD THING THEY HAVE EVER DONE!" The attorney storms out with their client.





**YOUR TURN! PUT YOUR  
QUESTIONS IN THE  
CHAT.**

