

The Dependency Court Practice Field Work

Structure Observation: Advisor Guidance Debrief

Introduction: The participant has completed the structured court process observation and is ready to debrief with you about their experience. This debrief is essential to completing the field work assignment. The structured court process observation included three broad concepts: courtroom preparation, courtroom conduct, and distinguishing between direct and cross-examination questions. To encourage the participant to think critically about the court process and to appreciate their role in the process we have created this *Advisor Debrief Guide* to assist with debriefing with the participant. Encourage participants to be strength-based in their responses and avoid negative critiques of the court process. Please review the relevant curriculum content and the suggested discussion points below to facilitate your debrief with the participant. The participant was presented this content in the online training, *Introduction to Dependency Court Practice*.

Please consider the child welfare competencies when debriefing with the participant. The child welfare competencies can be found by accessing this link:
<http://www.pacwrc.pitt.edu/pcwc/Competencies.htm>

The primary competencies for this module are advocacy and professionalism. Please review the definition of these competencies and redirect observation comments that are not affirming to the competencies.

1. Courtroom Preparation:

Participants were asked to identify the following items during their court process observation:

Item 1: Type of hearing, hearing purpose, and timeframe associated with the hearing

Facilitated Discussion Guidance: The Pennsylvania Dependency Benchbook, 2019, includes bench cards for each type of hearing which provide, the hearing purpose and timeframe.

The link to the revised bench book can be found here:
www.ocfcpacourts.us/assets/files/page-573/file-2427.pdf

The Introduction to Dependency Court Practice Online module links directly to the Benchbook and specific bench cards for relevant hearings. The hearing types include:

- Shelter Care hearing: p. 6-14, Pennsylvania Dependency Benchbook, 2019

- Disposition hearing: p. 10-13, Pennsylvania Dependency Benchbook, 2019
- Adjudication hearing: p. 7-7, Pennsylvania Dependency Benchbook, 2019
- Permanency hearing: p. 13-41, Pennsylvania Dependency Benchbook, 2019
- Termination of Parental Rights hearing: p. 17-20, Pennsylvania Dependency Benchbook, 2019
- Adoption hearing p. 19-4, Pennsylvania Dependency Benchbook, 2019

Discussion Points:

- What was the purpose of this hearing?
- Did it occur within the required timeframe?

Item 2: Identification of the grounds for the dependency petition and the evidence or testimony aligned with the purpose of the court hearing

Grounds for the dependency petition.

The child:

- 1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his/her physical, mental, or emotional health, or morals; a determination that there is a lack of proper parental care or control may be based upon evidence of conduct by the parent, guardian or custodian that places the health, safety or welfare of the child at risk, including evidence of the parent's, guardian's or other custodian's use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk;
- 2) has been placed for care or adoption in violation of law;
- 3) has been abandoned by his/her parents, guardian or other custodian;
- 4) is without a parent, guardian or other custodian;
- 5) while subject to compulsory school attendance is habitually and without justification truant from school;
- 6) has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of his/her parent, guardian, or other custodian and who is ungovernable and found to be in need of care, treatment or supervision;
- 7) is under the age of ten and has committed a delinquent act;
- 8) has been formerly adjudicated dependent, and who is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable; or
- 9) has been referred pursuant to an informal adjustment and who commits an act which is defined as ungovernable;

10) is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa.C.S. § 2511 (relating to grounds for involuntary termination) within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety or welfare of the child.

Facilitated Discussion Guidance: Before a petition is initiated for court intervention, the reasons for the petition must be identified. The reasons or basis for the petition are commonly referred to as *grounds*. When testifying in court the *grounds* should be stated to demonstrate the facts and circumstances that support the allegation.

Discussion Points:

- What type of evidence (document and testimony) was provided?
- How did the evidence including the testimony prove the allegation or grounds in the petition?
- How did the evidence including the testimony disprove the allegations or grounds in the petition?
- Describe how the attorneys for the parties (County Children and Youth Agency (CCYA) and parent or caregiver) and the guardian ad litem for the child advocated for their clients.
- Describe how the CCYA representative advocated for the child and family.

Item: 3: Common courtroom terms and their definition

Facilitated Discussion Guidance: Understanding court related terminology is a key component in effective courtroom preparation. When the participant knows and understands court terms they increase their ability to effectively prepare for and participate in the court process in a confident and competent manner. Please review with the participant the *Courtroom Terminology* handout from the online module.

(“Conquering the Courtroom”, SWAN Legal Services Initiative Training, May 2011)

Discussion Points:

- Select a term and ask the participant to define what is meant by that term.
- Are there any courtroom terms you would like clarified?

Item 4: Fact-based testimony and the objective, accurate, clear, descriptive, and relevancy standard.

Facilitated Discussion Guidance: When testifying, the participant must distinguish between fact and opinion. Review with participants the principles for fact-based documentation which will support their ability to effectively prepare for and deliver fact-based testimony.

Objective: your statements are just and reasonable and do not express bias or prejudice.

Accurate: the statements are precise and truthful. Although errors can and do occur, you should always strive to check facts, fully identify all sources of information, the spelling of names and terms, and grammar when documenting the case file.

Clear: the reader will comprehend your meaning without having to interpret the meaning of any jargon or ambiguous phrasing.

Descriptive: the reader will obtain a detailed understanding of the events that occurred.

Relevant: providing pertinent, important and significant information that relates directly to the child's safety, well-being and permanency and the families functioning and protective capacities.

Discussion Points:

- Identify examples of fact-based testimony presented in the hearing and how it met the standards for objective, etc.
- Identify examples of opinion-based testimony presented in the hearing and how it did not meet the standards for objective, etc .
- Describe your impressions of how the fact-based testimony and the opinion-based testimony were received

2. Courtroom Conduct:

Participants were asked to identify the following items during their court process observation:

Item 5: Caseworker demonstrated professionalism throughout the court process

Professionalism is one of the child welfare competencies for this module. Please remember to redirect participants when their observations and comments are not affirming to the competencies.

Facilitated Discussion Guidance: Professionalism is one of the child welfare competencies.

The competency of professionalism is defined as the child welfare professional comprehends and applies social work and child welfare ethics and principles to interactions and communications with children, youth, families, colleagues, and other team members.

When we consider professionalism for the court process, we are considering appropriate courtroom conduct and acceptable courthouse behavior.

The following are a list of recommended courtroom behaviors.

- Be punctual or show up early
- Be prepared
- Address courtroom participants by their titles and last names
- Address the judge as "Your Honor"
- Stand when the judge enters the courtroom
- Speak directly to the judge or attorney when testifying
- Discuss the family situation in private to avoid being overheard
- Speak to all parties and participants in a respectful manner
- Behave in a professional manner in the courtroom and throughout the courthouse, including no chewing gum and turn off your cell phone
- Check with your legal representative about any unique expectations in your jurisdiction
- Maintain both verbal and nonverbal professionalism at all times including during other hearings
- Wear appropriate business attire

("Conquering the Courtroom", SWAN Legal Services Initiative Training, May 2011)

Discussion Points:

- An example of positive professionalism you demonstrated in the court process either before, during, or after the hearing.
- Describe positive professional attire you demonstrated

Item 6: Positive example of advocacy you observed

Advocacy is one of the child welfare competencies for this module. Please remember to redirect participants when their observations and comments are not affirming to the competencies.

Facilitated Discussion Guidance: Advocacy is one of the child welfare competencies.

The competency of advocacy is defined as the child welfare professional recognizes and promotes the well-being of individuals, families, and communities and pursues social change on behalf of vulnerable populations.

The participant will need to professionally advocate for the children that they service while complying with law and policy and abiding in courtroom procedures.

Discussion Points

- Describe how the CCYA representative advocated for the child and family in the court process
- How do you intend to advocate for the child and family in the court process?

3. Distinguish Direct and Cross-Examination:

Participants were asked to identify three examples of direct and cross-examination questions and a least one example of an objection. If these questions or objections were not present in their observation of the court hearing, please modify the questions accordingly.

Item 7: Direct examination and its purpose

Facilitated Discussion Guidance: When participants are testifying, it is important for them to know how to respond to different questions and what types of questions each attorney will ask. Participant's responses are supported when they can identify whether a question is direct or cross-examination.

Direct examination is the initial questioning of a witness by the party who called the witness.

In this instance, your attorney will conduct what is called a direct examination of a witness. Direct examination is the opportunity to establish the witness' credentials and relate a narrative of the case in a way that is under their control. The testimony should include information that both supports and weakens the progress of the case.

Part of direct examination is to introduce yourself, identify your position, and describing their role in the matter before the court. It is important to be prepared to answer these types of questions.

Discussion Points:

- Provide an example of a direct examination question, who asked it and who was questioned?
- What is the purpose of direct examination questions?
- What is a proper response to... ? (Fill in with a direct examination question) and provide feedback based on the participant's response.

Item 8: Cross-examination and its purpose

Facilitated Discussion Guidance

Cross-examination is the questioning of a witness by an attorney for an opposing party and/or by the child's guardian ad litem.

Cross-examination provides an opportunity for opposing counsel to rebut previous testimony about their client. A party is entitled on cross-examination to bring out every circumstance relating to a fact, which an opposing witness is called to prove. *Commonwealth v. Green*, 581 A. 2d 544, 558-559 (Pa. 1990).

Discussion Points:

- Provide an example of a cross-examination question, who asked it, and who was questioned?
- What was the purpose of these cross-examination questions?
- What were appropriate responses to these cross-examination questions?

Item 9: Objections, purpose, and the court's ruling

Facilitated Discussion Guidance: An objection is defined as a lawyer's protest about the legal propriety of a question asked of a witness by the opposing attorney with the purpose of making the trial judge decide if the question can be answered.

Common Objections Raised in Dependency Court Hearings

Pennsylvania Title 225, "Rules of Evidence", governs proceedings in all Pennsylvania courts to ensure fair and efficient hearings that promote the ascertaining of truth to achieve a just determination. (Rule 102) The following list identifies and describes objections that may be raised in a dependency hearing. Familiarizing yourself with these objections will support competent and confident participation in the court process.

1. Objection to questions that are Argumentative, Compound, or Beyond the Scope

At times, an objection may be made by an attorney which states that questioning is argumentative, compound, or beyond the scope of the purpose of the hearing. Title 225 Rule 611, *Mode and Order of Examining Witnesses and Presenting Evidence*, requires courts to exercise reasonable control over the mode and order of examining witnesses to ensure that the examination of witness and presentation of evidence is effective for determining truth, avoids wasting time, and protects witnesses from harassment. (Title 225, 2013)

2. Objection to Leading Questions

Rule 611 also provides insurance that the scope of cross-examination is limited to the subject matter addressed in direct examination. Leading questions, defined as “Question which suggests the answer desired of witness” (Administrative Office of Pennsylvania Courts, 2018) may be used on cross-examination or when examining a hostile witness or adverse party. (Title 225, 2013)

3. Objection to hearsay

Rule 801 of Title 225 defines hearsay, as “a statement that (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement” (Title 225, Rule 801, 2013). Although there are several exceptions to the hearsay rule, it is best practice to confer with your legal representative as to which out-of-court statements can be repeated in your testimony.

4. Objection related to Relevance and Speculation

Two additional types of objections that may be used by attorneys are objections claiming relevance and speculation. Title 225 through rules 401 and 602, addresses relevance and speculation.

Evidence is considered relevant to the case if “(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action” (Title 225, Rule 401, 2013). If a judge determines that information is not relevant, it will not be considered in the ruling of the case.

Rule 602 states that “A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter” (Title 225, 2013). If a witness cannot prove through their testimony or other evidence that they have knowledge of the matter addressed in testimony, it may be ruled as speculative.

5. Objection to Opinion or Expert Testimony of a Lay Witness

At times an expert witness may be called to support claims made by the prosecution or defense in a case. Those individuals are considered experts in knowledge, skill, education, or experience. In cases of expert witnesses, their testimony can be stated in the form of an opinion and accepted by the court. If individuals not determined to be an expert make statements of opinion, an

attorney may object on the bases that the individual is not an expert on the matter. Rule 701 states “If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are rationally based on the perception of the witness, and helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue, and not based on scientific, technical or other specialized knowledge” (Title 225, 2013). It is important to ensure that your testimony is based in fact and not stated in an opinion unless it meets the limitations described above.

(Title 225, 2013)

<https://www.pacode.com/secure/data/225/225toc.html>

Discussion Points:

- Identify the types of objections that were made during the hearing
- What was the judge’s ruling on the objection(s)?
- What happened after the objection? (Probe: What did the judge/attorney do? What did the testifying individual do during the objection?)