

## Well-Prepared Caseworker and Well-Prepared Attorney

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LAWYER: Hi Sean, what can I do for you?

CASEWORKER: Well Robbie, I wanted to talk to you about the Smith case in preparation for the upcoming adjudicatory hearing. Did you get the case record and the abstract I sent last week?

LAWYER: Yes. Thanks for writing up a narrative summary. Also, I appreciate the case abstract which summarizes the legal basis for finding the children abused, neglected, or dependent. It's very helpful. Thanks too for all the names and addresses of possible witnesses and what they could testify to. Unfortunately, I haven't been able to get any further into the case than that. I've been in trial all week. Why don't you give me a quick rundown and bring me up to speed?

CASEWORKER: Okay. (The worker briefly reviews the information that is in the Narrative Summary.)

LAWYER: That's helpful, thanks. There are several things that must be proven in order to prevail at the adjudicatory hearing. First, we have to have clear and convincing evidence that both children are abused, neglected or dependent. That means we need facts to back up the allegations contained in the complaint that we filed. Also, we should discuss how the mother's conduct is predicted to continue to have an adverse impact on the children such as would warrant continued state intervention. As the Supreme Court of Ohio has held, the determination that a child is abused, neglected or dependent must be based on evidence as to conditions at the time of the hearing. We also need to show the agency's reasonable efforts to prevent an out-of-home placement. Finally, we should discuss the agency's efforts to place the children with relatives before turning to a third-party foster placement.

I see that you want to find that the mother abused her son Joey. What do you have to show intentional physical abuse?

CASEWORKER: Well, I went out on the initial referral and saw the bruise and bump above Joey's right eye. The bruise was purple in color, about three inches long and three inches wide, just above Joey's eyebrow, on his forehead. It looked kind of like a partial handprint. You could see fingers. I took a picture of it,

which is in the file. I asked Joey how it occurred, but at four years of age, he could not give me a good answer.

LAWYER: If he was older, he could testify or see the judge in chambers, but asking a four-year-old questions isn't going to get us anywhere with the judge. A four-year-old child is too impressionable. Anything else that could help prove this allegation?

CASEWORKER: There is also the medical record for Joey that suggests abuse.

LAWYER: When did you take Joey for a medical evaluation?

CASEWORKER: I took him on August 12th, the day after he came into the agency's care.

LAWYER: Why does the doctor think the bruising was intentionally caused?

CASEWORKER: Based on the bruise pattern. The doctor, Dr. While, indicated a pattern such as Joey's is generally intentional. She thought the bump could have occurred from a hard slap to Joey's forehead with a hand because of the bruise pattern. She did not think it would have come from a fall.

LAWYER: And what is the mother's explanation?

CASEWORKER: She thinks that the baby sitter, Lanie, with whom she left the children, may have caused Joey's bruise and bump. That is a weakness of this allegation. We really don't know who the perpetrator is. But the mother's explanation is still suspect, and I don't think it is credible. Dr. While is willing to testify that the injury to Joey's forehead was one to two weeks old and would have occurred before Ms. Smith left the children with Lanie.

LAWYER: What does the babysitter Lanie say about the bump and bruise?

CASEWORKER: She says that it was there when she started to care for the children.

LAWYER: Is Lanie available to testify?

CASEWORKER: Not easily. She has moved out of the state. I have written down her current address and phone number.

LAWYER: Okay, although I could still subpoena her. I'll decide later if I need her testimony. Any other reasons that you think that the court should find Joey or Marissa abused?

CASEWORKER: We could suggest that there was child endangering. The mother, Ms. Smith, created a substantial risk to the safety of the children, and violated a duty of care when she left them with a 15-year-old sitter for several days, a sitter whom she did not know well, and who was too young to assume care for that period of time. The fact that the sitter became overwhelmed and eventually left the children locked in the bedroom after almost four days helps show the mother's poor choice.

LAWYER: Those facts might work to show both children were abused. How about the neglect allegations? They might be stronger, at least for the younger child Marissa.

CASEWORKER: Well, I think that several of the provisions apply. First, although the Smith children were not abandoned by their mother, because we don't have a long enough period of time, and she didn't really want to give up her parenting rights, I do think that Joey and Marissa lacked adequate parental care because of the fault of the mom. Couldn't we argue, like we did for the child endangering allegation, that it was her fault to choose an inappropriate sitter for the child when she left Ohio for several days? Lanie, the sitter, said Ms. Smith didn't even call to check up on her and the children after she left. Also, there was virtually no food in the house when I got there--only one jar of peanut butter, a quart of milk in the refrigerator, and a partial loaf of bread on the counter. But the children couldn't get to this food anyway since they were locked in the bedroom when Lanie became overwhelmed and left her post.

LAWYER: Those facts could support a finding of inadequate parental care, but it might be better to suggest that she neglected the children by refusing to provide them the necessary care while she was away, using sub-section 3 of 2151.03, rather than sub-section 2. The problem with either of these arguments is that we must show that that situation still exists now, or is likely to repeat, so that the children are neglected now, they are still at risk, not just when Ms. Smith left them alone three weeks ago.

CASEWORKER: You're right. I could testify that as a 20-year-old she is without a support system—her mother is in Georgia and cannot care for the children. She has no friends in Ohio. Her boyfriend with whom she moved to Ohio deserted her. Alicia also will probably admit that she has no one to turn to, as she has said that to me, repetitively.

LAWYER: What about her financial situation?

CASEWORKER: It is unstable as she does not have a job. She is getting welfare checks from Georgia even though she lives in Ohio now, and isn't that illegal?

LAWYER: Yes. We may have to inform Georgia, if Ms. Smith refuses to tell them. I'll check on that.

CASEWORKER: She hasn't applied for financial assistance in Ohio, although I have asked her to. She has told me she might have to travel again with Bobbie to get more furniture, if he agrees to pay her, but she hasn't found a reliable sitter to stay with the children. She told me that she would again leave her children with a sitter, but she does not have anyone in mind yet. Maybe another acquaintance from the laundromat, she says.

LAWYER: Would the condition of Ms. Smith's home also demonstrate the lack of proper care necessary for the children's well-being?

CASEWORKER: Yes, I think so. The Smith home was very cluttered and dirty when the police officer and I first entered it to rescue the children. There were dirty dishes stacked on the kitchen table and in the sink. There was a strong, unpleasant odor in the kitchen, like rotting garbage. The garbage can was filled to overflowing and had spilled out on the floor. There was food caked on the counters and the stove. The pots and pans had food burnt inside and outside of them. When I open the dishwasher, I found it was filled with water which was green and slimy. The toilet in the bathroom was clogged with feces and toilet paper and would not flush. There were newspapers and clothing strewn all over the house. The temperature was about 95 degrees with all of the windows closed. Yet the house was filled with flies, both alive and dead. The only bed for the children was a dirty, mattress with not sheets lying on the floor in the upstairs bedroom. It smelled of urine.

During my last visit to Alicia's home, one week ago, little had been done to improve the dirty conditions inside the home. Some of the dirty dishes had been cleared away, but that was about it. The dirt, clutter, and unpleasant odors still remained. The dishwasher still was filled with slimy water. The toilet was still clogged with toilet paper and feces, even more than before. Although I spoke with Alicia during our first meeting about the need for her to ask the landlord to fix her broken toilet, she didn't call him until yesterday.

**LAWYER:** These are good facts and concrete proof for the judge that the situation which required the children to come into the agency's care still exists and that they are neglected. We should be appearing before Judge Judy. Although she is sympathetic to parents, she is willing to find children to be abused or neglected, as long as there are sufficient facts backing the agency's position. In this case, I think we have enough. Now, you mentioned in your email to me that Ms. Smith says she has hired a lawyer. Do you know who that would be?

**CASEWORKER:** Yes. Tom Brown.

**LAWYER:** OK. He is tough on witnesses, but we can get you ready for his cross examination. He also will likely ask that this be reduced to a dependency, showing that it was not his client's fault.

**CASEWORKER:** I would not have any problem with that as long as the children can remain in foster care while we continue to work on strengthening Ms. Smith's parenting skills, and her home and financial situation.

**LAWYER:** At the dispositional hearing, we can ask for the same services and the continuation of temporary custody, no matter whether the children are adjudicated abused, neglected, or dependent.

The last thing I want to talk about is our reasonable efforts to reunify Alicia Smith with her children.

**CASEWORKER:** I set up a visitation schedule, twice a week, and there have been nine scheduled visits at the agency visitation center, thus far. Alicia has missed three of the nine visits. I have supervised all six of the visits that she made and can talk in detail about how they've been going. In general, the children seemed pleased to see their mother. She is not very affectionate with them as I've never

seen her either kiss or hug any of the children. She pushes them away when they try to cling to her. She does play games and colors with them. They all cry when the visit is over. And the foster parents report that Joey is agitated after the visits. He has nightmares in which he cries out for his mother. Although his mother reports that he is potty trained, Joey is now wetting himself during the day as well as at night. Marissa becomes listless and withdrawn for several hours after visits with her mother.

LAWYER: Have you offered her other services?

CASEWORKER: I have scheduled four appointments for her to meet with me and discuss her progress – three at her home and one at the agency. She missed the agency appointment, without an explanation. She was not home for one of the scheduled home visits and says that I confused the date. I have a notation in my file that I telephoned her the day before this scheduled visit to confirm it.

LAWYER: That documentation will help prove it was not your mistake.

CASEWORKER: Good. When I have met with her, she's been defensive. I've offered her homemaker services and transportation; however, she's angrily rejected all offers of help. She insists she doesn't want me to interfere in her life.

LAWYER: What about other relatives?

CASEWORKER: Although the birth certificates of both children do not list a father, Alicia gave me his name. She said that he was 25 when they met, a car insurance sales person. Because they never married, and since it seems he has been out of the picture for a while, I have not really tried to search for him in Georgia, where she said he still resides. Alicia says that he has never paid any financial support for the children. She did not give me either a phone number, or an address.

LAWYER: I would like to show a better effort to contact him. Could you make some additional attempts and report back to me later this week if you have located him? See if you can turn up an address or phone number through the telephone pages, Google, or the worker's compensation and child support bureaus in Georgia.

CASEWORKER: Ok. I have talked Alicia's mother who says that she cannot care for the children at this point. Alicia's mother mentioned that Alicia had an aunt living close by, only an hour away from where she lives now. I have tried contacting her, both by phone and by letter. I have not received a response yet. Alicia and her mother have given me no other names of relatives.

LAWYER: What about the kids? How are they doing emotionally?

CASEWORKER: They're doing really well with the foster family. They seem to be thriving under their foster mother's consistent and nurturing care. I think Joey and Marissa clearly know their mother but are more comfortable with their foster family. And their foster family has grown quite fond them. Marissa tends to cling to her foster mother, while Joey has formed a particularly close relationship with his foster father. They read, play ball, and do chores together. They have enrolled Joey in preschool, where he is performing well.

LAWYER: How about physically?

CASEWORKER: Both are looking healthy. Marissa, who was somewhat underweight for her age back in August when we took custody, has gained weight. She is increasing her verbal and motor skills somewhat. Not at the normal progression, but better than when we first took her into custody. Joey has a slight speech impediment. At age four his social skills seem somewhat delayed. But in the past four weeks, both of these impediments seem to be lessening. Joey does have trouble sharing and sometimes becomes aggressive with other children over toys at the preschool. But he shares well with his sister.

LAWYER: Okay, you've been really helpful. Thanks for coming over today. I'll look at the file again and talk to the doctor to make sure that she will testify. If not, I'll subpoena her. But it sounds like she is pretty much on our side. Let's meet one more time on Thursday of this week before the court date, to go over your testimony, okay?

CASEWORKER: Sounds good. Four o'clock?

LAWYER: Yes, that would be fine.

CASEWORKER: Okay, thanks. Bye.