

**Together We Can
Mastering the Courtroom:
Effective Testimony Techniques**

2024

Simulation Exercise
for

Review Hearing

CASE SCENARIO

Cast of Characters	
Anthony Michaels	Age 10
Ashley Michaels	Age 6
Aden Michaels	Age 11 months
Cynthia Michaels	Mother
Christopher Michaels	Father
Pauline Blue	Paternal Aunt
Officer Frank Williams	Responding Officer
Rena Jones	Agency Child Protective Services (CPS) Investigator
Stephanie Shaw	Agency foster care caseworker
Becky Ross	Agency caseworker assigned to supervise visits
Annie Santosky, LCSW	Family therapist

*** Note:** For purposes of this training, we will use the term “State’s Attorney” for both the Bureau of General Counsel and Assistant District Attorney.

FIRST SIX MONTHS OF PLACEMENT

During the first six months, both parents actively engaged in the services outlined in their case plans. Stephanie Shaw reported that Mr. and Ms. Michaels attended all their weekly sessions with a substance use counselor. The counselor reported that despite Ms. Michaels’ consistent attendance, she didn’t feel that Ms. Michaels was really engaged in the treatment. She reported that Ms. Michaels frequently stated that she didn’t need to be in substance use treatment because she didn’t have a drug problem and was only attending because her social worker told her she had to attend. The counselor reported that Mr. Michaels was more engaged. He admitted to smoking marijuana prior to his incarceration but stated that he hadn’t used anything since he was arrested.

Mr. and Ms. Michaels have been visiting with the children regularly. Their visits are weekly and supervised at the agency. Additionally, they Skype with the children on Saturday and Sunday evenings for up to 30 minutes. Becky Ross, the caseworker assigned for visits, ensures supervision of and caseworker presence during the visits; Ms. Ross attends most of the visits. She reports that visits have gone well and that both parents have been appropriate. She observed that the children are excited to see both parents at the visits and Anthony has difficulty separating from both parents when the visit is over. Aden prefers to be held by Ms. Michaels and becomes very upset when she attempts to put him down. Although she enjoys the visits, Ashley has expressed that she wishes to remain with her Aunt Pauline. Ms. Ross further reports that both parents are engaged with their children and respond well to her direction regarding age-appropriate interaction and discipline techniques. She noted that overall, the parents were cooperative and open to direction. She highlighted a few concerns regarding Ms. Michaels’ occasional lack of attentiveness and interaction during the visits. On one occasion, Ms. Ross had to race to prevent Aden from falling off the back of a chair while Ms. Michaels was sitting beside him using her phone. Ms. Ross noted that Mr. Michaels was consistently attentive and interactive with the children. Mr. Michaels usually took the responsibility of feeding and changing Aden as well as supervising Ashley with her toileting.

The Michaels Family also sees Annie Santosky, LCSW. The children and parents started seeing her after Mr. Michaels was released from jail. Since starting, Ms. Santosky reports that the children have attended all scheduled sessions. Ms. Michaels has attended 15 of 18 weekly sessions, and Mr. Michaels has attended 8 of the 18 weekly sessions. Ms. Santosky communicates with Ms. Michaels’ psychiatrist who reports that Ms. Michaels is

medication compliant for her treatment of depression. She sees Anthony and Ashley separately and then has another session with the entire family. Anthony wants to return home and Ashley wants to only visit with her parents for an hour and live with her Aunt Pauline. She stated that she “never” wants to live with her parents again. However, when questioned, Ashley becomes tearful, shuts down, and will not articulate why she doesn’t want to return home. A report including all of this information has been submitted with the court letter.

CASE REVIEW HEARING

Direct and Cross Examination of Stephanie Shaw, DCFS caseworker

As part of the Case Review Hearing, the state's attorney has decided to call Stephanie Shaw, the DCFS caseworker, as her only witness at the case review hearing. Through Stephanie Shaw she intends on getting all testimony needed for the hearing and to maintain the children in their present placement.

State's attorney conducts direct examination: Take all necessary testimony of Stephanie Shaw concerning mother's case plan status and visitations.

Mother's attorney conducts cross examination: Using the report of the counselor, ask questions regarding why there should be such an extended delay to the children's return home, as they can all go home together today and/or pose questions proposing the boys' immediate return home.

Children's Attorney conducts cross examination: Determine which position you are going with and ask your questions accordingly. Make sure to pay attention to the questions asked by the other attorneys. Sometimes you might have a lot of questions and sometimes not many. You have to be on your toes. Make sure that you let the court know the positions and wishes of the children, which you are allowed to state.

For this exercise please review:

- Case scenario
- Family Therapy report
- Review Hearing Worksheet

Attorney Tips:

- **For direct:**
 - Meet with the witness in advance and decide what the witness will bring with them to the stand.
 - Ask the worker if anything has changed from the time that the counselor wrote the report while preparing the witness and also on the stand.
- **For cross:**
 - Decide if all questions for this witness are necessary or if instead pointing out inconsistencies during a closing argument may be more effective.

Family Therapy Report

Annie Santosky, LCSW

April 9, 2021

The Michaels family has been attending family therapy with me since November 2, 2020. We meet weekly. At our appointments, I see Anthony and Ashley individually for half an hour each. This is then followed by a family session with all the children, including Aden, and the parents together for another half an hour. Ms. Blue (foster parent and biological aunt) usually brings the children to the appointments, but sometimes the caseworker, Ms. Shaw, brings them. The family visits while waiting for their session in the supervised visitation center at Community Counseling.

To date, the children have attended all their weekly sessions. They appear to have adjusted well to their foster home with their aunt, though Ms. Blue reports that Ashley throws severe tantrums beyond what is typical for her age, and sometimes throws items or destroys property. She also antagonizes and fights with her siblings frequently. Caseworker also confirmed that Ashley has some acting out behavior at home and in school. Anthony, by contrast, is very eager to please adults and seems parentified. He sometimes presents as withdrawn or unresponsive to questioning.

Sessions with the children focus on dealing with their feelings related to their removal from their parents' home and adjustment to foster care. More recently, sessions have focused on the children's feelings around spending more visitation time with their parents and their transition back to living at home with their parents. Anthony uses positive language to describe his mother. However, when Ashley is asked about returning to her mother's home, she is adamant that she wants to stay with Aunt Paulie. Anthony is agreeable to returning home but also reports that staying with Aunt Paulie would be "okay."

Ms. Michaels has attended most of the family sessions—she has had to cancel three of 18 weekly sessions due to alleged conflicts. Ms. Michaels is appropriate towards the children during these sessions. I have been working with her and the children around setting clear parent/child boundaries. I have also been working with the family on improving communication with one another, especially when there is family stress or conflict. Ms. Michaels is cooperative. The biological father, Mr. Michaels, has attended eight family sessions. He has consistently expressed support for Ms. Michaels.

I understand the agency is suggesting more visitation time between the Michaels children and their mother and that the agency plans to reunify the children soon. Because of Ashley's behavioral issues, it is my clinical opinion that a hurried transition of the children will be setting this family up for failure. Ms. Michaels still struggles with many aspects of parenting and her own recovery. I understand from Ms. Michaels' psychiatrist reports that she is medication compliant for her treatment of depression. But her substance use counselor indicates that Ms. Michaels is not effectively engaged in her treatment, despite her consistent attendance. High levels of stress could jeopardize her stability.

In my clinical opinion, a transition home for the children should begin in six months and should be gradual. Ashley should continue with therapy to help her address her relationship with her mother and behavior issues before any transition home.

If you have any questions, please do not hesitate to contact me.

Best regards,
Annie Santosky, LCSW

CASE REVIEW HEARING PREPARATION WORKSHEET

HEARING PURPOSE:

When a child is removed from the custody of the parent(s) and placed in the custody of the department, a review hearing is held at least once every 6 months until the child is returned home or otherwise permanently placed. The Judge will consider the information included in the case plan and court report. Hearsay is admissible at this hearing.

PRE-HEARING RESPONSIBILITIES:

Absent/unknown parent(s):

What diligent efforts have been made to identify and locate an unknown parent or to locate a parent whose whereabouts is unknown?

Notice of hearing to caretaker(s):

Did DCFS provide notice of the right to foster parent(s)/pre-adoptive parent(s)/relative(s) providing care? Be prepared to explain what diligent efforts were made to locate and notify them if they do not appear.

Indian Child Welfare Act:

Any reason to know that the child is an Indian child?

Diligent search for relatives/other significant persons:

Be prepared to describe diligent search efforts for adult relatives and persons who have a significant relationship with the child.

Identification/location of family connections:

What efforts have been made to identify each parent, any suitable relative or other suitable individual willing and able to offer a stable and safe home for the child, all grandparents, all parents of a sibling where the parent has legal custody of the sibling, all adult relatives?

APPLICABLE COURT DOCUMENTS:

Case Plan:

The case plan should be filed at least 10 days before the review hearing. Be prepared to explain to the court any information that is different from or in addition to the information provided in the case plan that was filed. If not filed timely, be prepared to explain delay.

Court Report:

The court report should be filed at least 10 days before the review hearing. Be prepared to explain to the court any information that is different from or in addition to the information provided in the court report that was filed. Any progress updates from service providers, drug screens, DNA results, etc. can be attached to the court report. If not filed timely, be prepared to explain delay.

Family Connections Form:

This form should be completed/updated and filed at least 10 days before the hearing and is often attached to the Court report.

CASE REVIEW HEARING PREPARATION WORKSHEET

ISSUES:

EVALUATION OF CORE SAFETY PRINCIPLES (CWADM):

THREAT	Caretaker's behavior or family situation indicates imminent serious harm to the child
CHILD VULNERABILITY	The extent that a child can protect herself from identified threats
CARETAKER PROTECTIVE CAPACITIES	Strengths in the way a caretaker thinks, feels and/or acts that prevents or control threats of danger and guides case planning activities

Is it safe for the child to return home today? If yes explain:

- There are no threats of danger OR
- The child is not vulnerable to a threat of danger OR
- The caretaker(s) possess sufficient protective capacities to manage any threat of danger

Why is it not safe for the child to return home today?

- The threat of danger continues to exist (describe in detail) AND
- The child is vulnerable to the threat of danger (explain why) AND
- Caretaker(s) do not possess sufficient protective capacities to manage the threat (explain why)

RECOMMENDATION:

What is the DCFS recommendation to the Court for the Review Hearing?

- Recommending custody to the parent: If so, be prepared to explain why safety is no longer a concern and any recommended terms/conditions for return, such as continued DCFS oversight
- If not recommending parental custody, be prepared to explain why the child cannot safely be returned to the parent

Safety considerations for each child:

- The threat of danger continues to exist (describe in detail) AND
- The child is is vulnerable to the threat of danger (explain why) AND
- Caretaker(s) do not possess sufficient protective capacities to manage the threat (explain why)

CASE REVIEW HEARING PREPARATION WORKSHEET

RECOMMENDATION:

Court report considerations:

- Continuing necessity for and appropriateness of child's placement
- Progress toward mitigating causes necessitating placement
- Extent of case plan compliance by parent(s) (using behavior improvement and safety language)
- Extent of case plan compliance by DCFS
- Safety of the child
- The likely date by which child may achieve permanency

Case plan considerations:

PLACEMENT -

- If the recommendation is to continue the child in the present placement, why is this placement still appropriate?
- If the placement is a substantial distance from the parents, why is the present placement in the best interest of the child?
- How is the current placement the least restrictive and most family-like setting available, consistent with the best interests and special needs of the child?

SERVICES -

- How is the case plan to provide services to the parents, child and foster parents designed to improve conditions in the parents' home so that the child may return home or achieve another permanent plan?
- How do the services aim to enhance parent protective capacities?
- What is the plan for assuring that the child is afforded the greatest opportunity for normalcy through engagement in age/developmentally appropriate activities on a regular basis?

SAFETY -

- What, if any, are the present threats of danger in the home? How is the case plan designed to eliminate the threats?
- Is the child still vulnerable to the threat? If so, how?
- What are the behaviors of the parents that need to change in order to increase their protective capacities against the threat and safely parent their children? What specific elements of the case plan are included to increase parental protective capacity? What parental behaviors need change?

VISITATION -

- What is the plan for family time with parents and siblings (and half-siblings in addition to non-blood relatives who the child considers siblings)? What is the frequency of visits? How can more frequent visits be arranged? If parents and/or siblings are separated by distance, how will visits be managed to create the most family-like setting? What is the plan for visits with relatives and other non-blood individuals who the child considers family?

CASE REVIEW HEARING PREPARATION WORKSHEET

RECOMMENDATION:

Case plan considerations:

PERMANENCY EFFORTS -

- What specific steps have taken place since the last hearing to allow the child to return home? If the plan is not to return home, what is the permanent plan and what specific steps have taken place to move toward achieving the permanent plan?

CONTINUING CONTACT -

- How will connections with relatives and/or fictive kin be maintained while the child remains in foster care? What relatives/kin have been identified? What is the plan for continuing contact with each person identified?

TRANSITION PLANNING -

- If the child is age 14 or older, describe in detail the programs and services that will prepare the child for transition to independent living.

PARENT CONTRIBUTION -

- What is the amount of money recommended that parent(s) contribute to the care of the child while in foster care?

TERMINATION OF PARENTAL RIGHTS -

- If the child's stay in foster care has reached the point where the department is required to file a petition to terminate parental rights and the department has not done so, explain in detail the compelling reason(s) for not doing so and why it is not in the child's best interests to terminate parental rights.

**Carefully review the Case plan and the Court report,
including the Family Connections form, before the hearing!**
