

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

2024

Simulation Exercise
for

Termination Hearing/Trial

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.

Motion Hearing through Termination of Parental Rights Hearing

A motion hearing was held on June 11, 2021, and the court granted the State’s request ordering that visitation be once again supervised by the agency a minimum of weekly for one hour. All other previous orders remained unchanged. As a result, the Michaels, after two months of having unsupervised visitation, once again had their visits supervised by Ms. Ross.

Due to tension between Mr. and Ms. Michaels, Mr. Michaels moved out of the home. He continued being consistent with visits and Ms. Ross noted his positive interactions with the children. Ms. Michaels’ attendance at visits became increasingly inconsistent. She first started arriving at least 30 minutes late and eventually would be a no-show without communicating with Ms. Ross regarding her anticipated absence.

Ms. Shaw continued to monitor Mr. and Ms. Michaels’ compliance with their substance use counseling. Mr. Michaels missed sessions but continued to submit to urinalysis, the results of which were negative for substances. Ms. Michaels remained in full relapse. During conversations with Ms. Shaw, Ms. Michaels continued to report that she was going to return to her treatment sessions, but to date has failed to resume her treatment.

Family therapist, Ms. Santosky, reports that there are varying degrees of progress between the parents. Both parents initially responded affirmatively to suggestions and acknowledged that they had made mistakes. However, recently, Ms. Michaels started exhibiting concerning behaviors and stated that she was feeling so much better that she didn’t think she needed her medication any longer. Ms. Santosky is concerned that Mr. Michaels minimizes Ms. Michaels’ mental health condition and is unwilling to take the situation seriously. Anthony and Ashley have been doing well with their Aunt Pauline. Anthony wants to return home because he states that he is worried about his mother and “needs to take care of her.” Ashley wants to stay with her aunt.

Mr. Michaels remains a supportive presence for his children, however, he remains unable to care for his children full-time. He wants Ms. Michaels to regain custody; however, he is also fine with his children remaining with his sister until Ms. Michaels is ready. During one conversation he told Ms. Shaw, “I know Cynthia is still a mess.

Pauline is what is best for my kids. They should stay with her.”

Based on the Michaels parents’ lack of progress 17 months after the children were removed, the agency determined that it would be in the children’s best interest to terminate their parents’ rights and have Ms. Blue adopt them. Ms. Shaw had a conversation with Ms. Blue, and she stated that she is willing to be a permanent home for the children if they can’t live with their parents. A Termination of Parental Rights Petition was filed on February 23, 2022, and a hearing was scheduled for May 31, 2022.

TERMINATION OF PARENTAL RIGHTS (TPR) HEARING Direct and Cross Examination of Agency Caseworker Becky Ross

Due to problematic visits and lack of parental progress to resolve issues, a Termination of Parental Rights (TPR) Petition was filed 17 months after removal of the children from their home and the hearing is being held three months after the Petition was filed.

The family had six months of supervised visitation, two months of unsupervised visits, and then due to a problematic unsupervised home visit, Becky Ross resumed supervising the visits about eight months after removal.

Assume that at the TPR hearing the agency foster care caseworker, Stephanie Shaw, has already testified to what led the agency to file the TPR petition, to the agency's reasonable efforts to reunify the family, and to the parents' failure to correct the problems that caused the children to come into care. Ms. Shaw testified that: Ms. Michaels was overwhelmed, which led to her relapse; Ms. Michaels has been unable to recover from that relapse; Ms. Michaels is no longer participating in substance use treatment; and Mr. Michaels has been minimally involved in the case and has unstable living arrangements. Ms. Shaw has also testified about the status of the children in their aunt's home, school, and community.

State's attorney conducts direct examination. Attempt to **introduce the visitation log as a business record** with Becky Ross to allow for testimony regarding the visits she did not personally supervise. Using the visitation log, have her testify to the facts of the case regarding supervised visitation that will support the grounds for a TPR including consistency with visits, interactions between the children and parents, and the parents' failure to improve parenting skills throughout the case.

Mother's attorney conducts cross examination. Try to demonstrate that most of the visits she supervised were appropriate, with the parents interacting with the children. Consider whether you will object to the admission of the business record.

Children's attorney conducts cross examination. Decide what position you need to go with and ask the appropriate questions. Pay close attention to the questions that have been asked so you do no duplicate. Make points with your questions. And make sure the court is aware of your position.

For this exercise review:

- Case scenario
- Visitation log
- Termination Hearing/Trial general notes

Attorney Tips:

- **For direct:**
 - Meet with the agency caseworker and review the visitation log including missed or problematic visits and review the questions you will ask to attempt to introduce this record by the witness.
 - Review any weakness in documentation and be familiar with the business practice of documentation for your agency.
 - Discuss the requirements to prove the grounds for TPR with the witness.

■ **For cross:**

- Review the visitation supervisor's log to determine if there are any points that need to be clarified and additional information that may not have been included in the log. Be prepared to restrict/limit the use of the visitation log, including possible hearsay issues.
- Ask questions about missed visits – notice to agency, canceled by others, reason for cancellation, and ability to communicate with agency caseworker about visits. Ask follow-up questions about the opportunity and efforts to reschedule visits.

Visitation Log: Michaels Family

Case No. 2345-XX

DATE	SUPERVISOR	ATTENDEES	LOCATION	NOTES
10/19/20	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	First visit at agency. Kids ran to Mother and hugged and kissed. Mother was appropriate during the visit but appeared very tired.
10/26/20	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Mother mostly held Aden while Anthony and Ashley played. This writer redirected Mother to engage with all three children. Visit was appropriate.
11/03/20	Becky Ross	N/A	AGENCY	Missed visit. Mother texted that she was on the bus, but then didn't respond to follow up texts. Took the kids back to the foster home after 1 hour.
11/9/20	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Mother was 20 minutes late but engaged with all three children appropriately upon arrival.
11/16/20	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Mother and children played legos. Visit was appropriate. Anthony expressed not wanting to leave Mother at the end of the visit.
11/23/20	Becky Ross	N/A	AGENCY	Missed visit. Foster parent said that she had scheduled doctors' appointment and forgot to tell SW.
11/30/20	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels Christopher Michaels	AGENCY	Father attended visit along with Mother and all three children. Father informed this writer that he was released from jail at the end of last month. This writer assisted Father with ideas for play with the children.
12/07/20	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels Christopher Michaels	AGENCY	Mother and Father attended visit with all three children. Mother appeared drowsy and sat to the side while Father played with the kids.
12/14/20	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels Christopher Michaels	AGENCY	Mother and Father arrived together. Officer Richards from security informed this writer that Mother and Father engaged in a loud verbal altercation in lobby area prior to visit. Visit was appropriate. Anthony again had difficulty separating from parents at end of visit.
12/21/20	Becky Ross	Anthony Michaels Ashley Michaels	AGENCY	Mother arrived alone and was 10 minutes late. Visit was appropriate.

DATE	SUPERVISOR	ATTENDEES	LOCATION	NOTES
		Aden Michaels Cynthia Michaels		
12/28/20	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	McDonalds (421 4th St)	Visit with Mother and all three children. Mother commented that Ashley was coloring outside the lines; Ashley became upset. Everyone seemed happy to have a new location for the visit.
01/04/21	Jan Garcia (covering)	Anthony Michaels Ashley Michaels Cynthia Michaels Christopher Michaels	McDonalds (421 4th St)	Father and Mother visited with Anthony and Ashley. Foster parent informed this writer that Aden had a fever.
01/11/21	Jan Garcia (covering)	Anthony Michaels Ashley Michaels Aden Michaels Christopher Michaels	McDonalds (421 4th St)	Father arrived alone and reported he did not know Mother's whereabouts. He engaged children intermittently during play.
01/19/21	Jan Garcia (covering)	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels Christopher Michaels	McDonalds (421 4th St)	Case worker Shaw attended the first part of today's visit and had Mother sign a release. Visit with Mother, Father, and all three children was appropriate.
01/25/21	Jan Garcia (covering)	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	McDonalds (421 4th St)	Visit with Mother and all three children. Anthony got in trouble in school today and Mother was upset about it. She did ask Anthony appropriate questions about the incident.
02/01/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	McDonalds (421 4th St)	Visit with Mother and all three children. Visit was appropriate, but this writer had to intervene during a significant fight between Anthony and Ashley over a toy they both wanted.
02/08/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels Christopher Michaels	AGENCY	Visit with both parents and all three children. Visit was appropriate. Mother commented that Ashley's hair looked messy.
02/16/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	McDonalds (421 4th St)	Visit with Mother and all three children. Ms. Blue brought the kids and shared that her brother (Father) was trying to get a job and couldn't come to all the visits.
02/22/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	McDonalds (421 4th St)	Visit with Mother and all three children. Mother became upset because Ashley said, "I'm bored."

DATE	SUPERVISOR	ATTENDEES	LOCATION	NOTES
03/01/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Visit with Mother and all three children. Visit was appropriate.
03/08/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Mother was late to visit, and all children appeared restless. Mother apologized to the children. They had difficulty engaging with Mother after she arrived.
03/15/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Visit with Mother and all three children. Mother brought snacks and all children were happy to eat them.
03/22/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels Christopher Michaels	AGENCY	Visit with Mother, Father, and all three children. Mother remained on her phone for much of the visit. Father was engaged in a game with Anthony and Ashley when Aden climbed on the back of a chair and started to fall. This writer had to intervene to prevent him from falling.
03/29/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Visit with Mother and all three children. Mother told Aden he could only have one pack of animal crackers. Aden threw a tantrum and this writer intervened to coach Mother in calming the child.
04/05/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	McDonalds (421 4th St)	Visit with Mother and all three children, but Aden was late in coming from daycare. Mother became upset that Aden was late, and this writer had difficulty redirecting her.
4/12/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Visit with Mother and all three children. Visit was appropriate.
4/17/21	N/A	Family visit	Home	Unsupervised day visit
4/24/21	N/A	Family visit	Home	Unsupervised day visit
5/01/21	N/A	Family visit	Home	Unsupervised day visit
5/08/21	N/A	Family visit	Home	Unsupervised day visit
5/14/21 – 5/16/21	N/A	Family visit	Home	Unsupervised weekend visit
5/21/21 – 5/23/21	N/A	Family visit	Home	Unsupervised weekend visit
5/28/21 – 5/30/21	N/A	Family visit	Home	Unsupervised weekend visit
6/04/21 – 6/05/21	N/A	Family visit	Home	Unsupervised weekend visit

DATE	SUPERVISOR	ATTENDEES	LOCATION	NOTES
06/14/21	Jan Garcia (covering)	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Mother visited with all three children. She was distracted and reported anger that she was “doing this visit in this crappy room again.”
06/21/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels	AGENCY	Missed visit. Mother and Father no-show after 30-minute grace period.
06/28/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels	AGENCY	Missed visit. Mother and Father no-show after 30-minute grace period.
07/05/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Visit with Mother and all three children. Visit was appropriate.
07/12/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Visit with Mother and all three children. Visit was appropriate.
07/19/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Visit with Mother and all three children. Visit was appropriate.
07/26/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Visit with Mother and all three children. Visit was appropriate.
08/02/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Caseworker Shaw drove Mother to visit. She appeared tired but played with the children.
08/09/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels	AGENCY	Missed visit. Mother and Father no-show after 30-minute grace period.
08/16/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels	AGENCY	Missed visit. Mother and Father no-show after 30-minute grace period.
08/23/21	Jan Garcia (covering)	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels Christopher Michaels	AGENCY	Mother and Father arrived late. Officer Richards from security informed this writer that Mother said “get out of my fucking life” to Ms. Blue when she passed her on the way in.
08/30/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Visit with Mother and all three children. Visit was appropriate.

DATE	SUPERVISOR	ATTENDEES	LOCATION	NOTES
09/07/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Christopher Michaels	AGENCY	Ms. Blue brought the children to the agency along with Father. Mother was a no- show. Appropriate visit with Father. As father was leaving, he stated “You know, if the kids can’t come with me, I think they should stay with my sister.” This writer told him to speak with the caseworker.
09/13/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Mother attended visit along with all three children. Before visit, Ashley told this writer “I don’t want to see my mom.” Visit was appropriate. Mother worked hard at engaging Ashley. Anthony was happy to talk to Mother.
09/20/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Visit with Mother and all three children. Visit was appropriate.
09/27/21	Jan Garcia (covering)	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Mother attended visit along with all three children. Ashley showed Mother a bracelet that she got from “auntie.” Mother commented that Ashley’s hair was a mess. This writer attempted to redirect Mother and Mother became irate and stated “I’m done with this shit. Just keep them.” Mother subsequently terminated the visit early. All three children became visibly upset.
10/04/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Mother attended visit along with all three children. Mother did not interact with any of the children. Thirty minutes into the visit, she excused herself to go to the restroom and did not return. Anthony was very worried and upset.
10/11/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels	AGENCY	Missed visit. Mother no-show after 30- minute grace period.
10/18/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Visit with Mother and all three children. Mother remained on phone and this writer had to redirect her to interact with the children.
10/25/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Visit with Mother and all three children. Visit was appropriate.
11/01/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Visit with Mother and all three children. Aden became fussy and Mother told this writer that Ms. Blue was spoiling him.

DATE	SUPERVISOR	ATTENDEES	LOCATION	NOTES
11/08/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Visit with Mother and all three children. Mother brought fruit snacks and the children appeared happy to eat the snacks. Mother appeared tired.
11/15/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Visit with Mother and all three children. Mother appeared tired and the children played by themselves.
11/22/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels	AGENCY	Missed visit. Mother no-show after 30- minute grace period.
11/29/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels	AGENCY	Missed visit. Mother no-show after 30- minute grace period.
12/06/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels	AGENCY	Missed visit. Mother no-show after 30- minute grace period.
12/13/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels	AGENCY	Missed visit. Mother no-show after 30- minute grace period.
12/20/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels	AGENCY	Missed visit. Mother no-show after 30- minute grace period.
12/27/21	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels	AGENCY	Missed visit. Mother no-show after 30- minute grace period.
01/03/22	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels Cynthia Michaels	AGENCY	Mother was late to visit, and all children appeared restless. They had difficulty engaging with Mother after she arrived. Mother told the kids she was sorry she missed some visits.
01/10/22	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels	AGENCY	Mother called to inform this writer that she would be late to the visit. Mother no-show after 30-minute grace period.
01/17/22	Becky Ross	Anthony Michaels Ashley Michaels Aden Michaels	AGENCY	Missed visit. Mother no-show after 30- minute grace period.

Termination of Parental Rights (TPR) Hearings

Purpose

In a Termination of Parental Rights Hearing the primary focus is on:

- Whether a ground to terminate parental rights exists, and
- Whether termination is in the child's best interests.

The court shall enter written findings on both issues. The consideration of best interests of the child shall include consideration of the child's attachment to their current caretakers. La. Child. Code art. 1037(B)(1).

Timing

The agency shall file a TPR petition if the child has been in state custody for 17 of the last 22 months, absent a documented compelling reason why filing is not in the best interest of the child. La. Child. Code art. 1004.2.

Any parent may be subject to proceedings under this title and shall have juridical capacity for such proceedings regardless of age or matrimonial status. La. Child. Code art. 1005.

Upon a showing of good cause and notice to the opposing party, the court may grant, deny, or restrict a requested continuance of the proceeding. The court shall avoid delays in resolving the status of the parent and in achieving permanency for the child. La. Child. Code art. 1032.

After final submission; the court shall render its judgment within thirty days La. Child. Code art. 1037(A).

Notice/Service

For the child, through counsel, and if a parent subject to a TPR petition resides within the state, service of citation shall be made through personal or domiciliary service, or by certified or electronic mail, not less than 15 days prior to commencement of the hearing on the matter. La. Child. Code arts. 1019.2 and 1021.

If the parent lives outside Louisiana, service of citation shall be made by registered mail to the address indicated in the petition, return receipt required, not less than 5 days prior to commencement of the hearing on the matter. La. Child. Code art. 1022.

A curator ad hoc shall be appointed for parents whose whereabouts are unknown and service will be made on the curator. La. Child. Code art. 1023.

If the parent has been served or has been located and notified in accordance with the rules and the parent fails to appear at the hearing, then the hearing shall be held in the parent's absence and the petitioner shall be required to establish prima facie proof of the allegations contained in the petition. La. Child Code art. 1033.

Standard of Proof

The petitioner bears the burden of establishing each element of a ground for termination of parental rights by clear and convincing evidence. La. Child. Code art. 1035. Although usually more than one termination ground is alleged, only one need be proven at trial.

The parent asserting a mental or physical disability as an affirmative defense to abandonment pursuant to Article 1015(4) bears the burden of proof by a preponderance of the evidence. La. Child. Code art. 1035.

Evidence

Author's Note to art. 1002 states "The rules of evidence applicable to civil cases apply to the proceeding to terminate parental rights." See La. Child. Code art. 105.