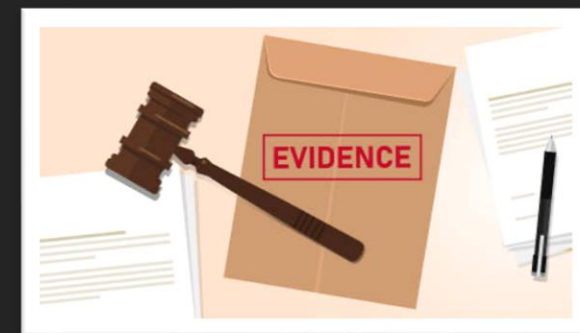
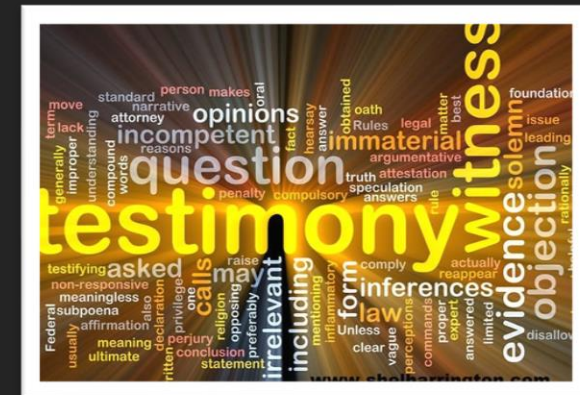




Dependency Law: Evidence, Practice, and Procedure



O.C.G.A. 24-1-2(c)(7) specifically states:

“The rules of evidence, except those with respect to privileges, shall not apply in...[d]ispositional hearings and custody hearings in juvenile court”

Problem:

Any review hearing in Juvenile Court could be considered a
“dispositional” or “custody hearing.”

- So, what does this statute mean for purposes of what evidence will be considered relevant for the particular type of hearing being conducted?
- How should we approach proceedings given the verbiage in this statute?
 - Give opening statements to crystallize the point of the hearing.
 - Give closing arguments to make sure that the judge is focusing on the proper information and applying the appropriate standards of review per the Code.
- “Adjudicatory Hearing” vs. “Dispositional Hearing” vs. “Review Hearings”
 - What should we argue at each of the different hearings?

Preliminary Protective Hearings

These hearings seem to be “loosey goosey,” but there are still certain rules and parameters that must be adhered to.

- O.C.G.A. § 24-1-2 (d)(1): In...preliminary hearings in any court, the rules of evidence shall apply except that hearsay shall be admissible
 - “Double Hearsay” or hearsay within hearsay (whether spoken or written) is never admissible, and no exception or exemption applies
- Type of evidence generally presented:
 - Case Manager testimony
 - Police Officer testimony
 - Photographs
 - Brief hospital summaries/discharges
- Due to the tight timelines, usually it is just the DFCS Case Manager who testifies at the PPH.

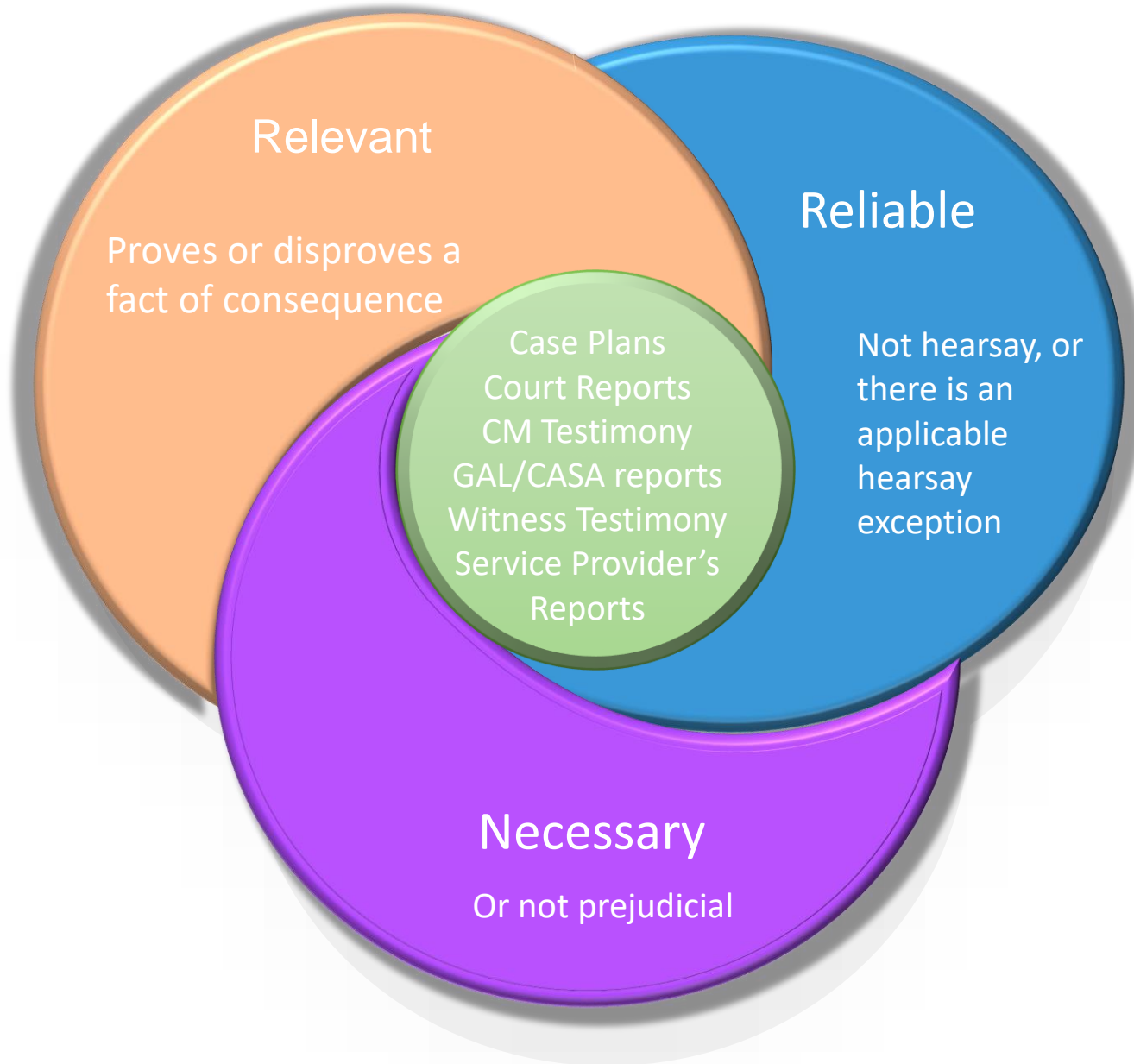
Adjudication Hearing

Rules of Evidence and Burden of Proof

- “Hearsay” is not admissible
- All evidentiary rules apply:
 - Judicial Notice
 - Relevancy
 - Privileges
 - Expert witness
 - Lay person testimony
 - Authentication and identification
 - Best evidence
 - ETC ETC ETC

Discovery Requests Relating to Drug Screening Kits

- If there is a positive result that you are aware of, make a discovery request/request for production of documents from DFCS for the name of the test kit and/or the actual kit's itself packaging and/or insert for the test kit used from the positive screen.
 - The kit's packaging should state any disclaimers about false positives and how heavily the results can be relied upon.
 - Ask to enter it into evidence.
- Common false positive medications are listed on the kit's packaging, and the information can be pulled up online if you know the brand name.
 - Check Lexis or Westlaw for any cases involving false positives for that specific drug testing kit.



Disposition Hearing, Initial Periodic Review (“75-Day Review”), Permanency Plan Review Hearings, and Post Permanency Review Hearings

- Expect certain evidence to be presented at each of these hearings.
- If opposing counsel has not provided you with documents or a witness list AT LEAST 72 hours prior to the scheduled hearing, then try to object on the basis that you have not had an opportunity to review the information prior to the hearing and prepare a rebuttal.
- Often, the evidence presented by the Division at falls short of the “relevant, reliable and necessary” language outlined in the Code.

Tendering Documents into Evidence During a Hearing and Asking for it to be Admitted into Evidence: Virtual or In-Person

- When tendering a document as evidence during a trial, announce to the court that you would like to introduce a document.
 - Be prepared to lay the proper foundation for introducing the document.
- Indicate which pre-marked item that you will be showing the other parties in the hearing.
 - Presumably, they will have the items available to review from when you emailed it everyone ahead of time.
- When presenting the item to the witness:
 - If you are in-person, ask the court if you can approach the witness, and state: “I am showing the witness, what has been pre-marked as Respondent’s Exhibit A for identification purposes.”
 - If you are virtual, ask if you can share your screen and state: “I am putting up on the screen, what has been pre-marked as Respondent’s Exhibit A for identification purposes.”
 - Your court reporter should can take down the exhibit and make sure that it is a part of your record.
- Then ask the witness:
 - Do you recognize the document?
 - How do you recognize it?
 - Is it true and accurate?
- If everything checks out, move to admit it into evidence and go forward with your examination of the witness.
- Prepare for objections to your evidence, and prepare to object to opposing counsel’s evidence.

SAAG Tendering Drug Screens Into Evidence

Hold the SAAG Accountable
During Hearings

Foundation

- Drug screen results should not just be referenced in a case worker's testimony without laying the proper foundation to authenticate to tender the drug screen before it is entered into evidence.
- If the case worker begins to mention the screen, be prepared to object on the basis of:
 - Lack of Personal Knowledge → They themselves did not administer the collection of the sample
 - Lack of Authentication → No Affidavit from a person qualified to collect said samples
 - Lack of Chain of Custody → The Case Manager has not established the path from the time of collection of the sample through to the documentation of the results
 - Best Evidence Rule → Hard copy of the actual results along with the affidavit
- If they cannot provide the actual document of the screen results and authentication thereof, then the results themselves should not be made a part of the record via document or testimony.

Issues to Raise Relating to Reliability of the Lab, Collection, and Test Kit

- False Positives
 - Argue that screens cannot differentiate between CBD, THC, Delta 8, and hemp.
 - If DFCS has no one there to testify as to this, then ask that the screen be excluded from evidence.
- Efficacy/Reliability of the Test Itself
 - Research to see if there have been any complaints about the particular brand, company that produces the test, or type of test that was used.
- Efficacy/Reliability of How the Sample was Collected
 - Improper collection of the sample.
- Contamination of the Sample
 - Contamination of sample in the lab.
 - Environmental contamination of the sample. A person's hair follicles may be at risk of contamination from environmental/external factors as the average person lives their life.
 - This can cause positive results from drugs that the person has not actually ingested

Issues to Raise Relating to Challenging Results of Drug Screens and In-Court “Quick Screens”

- Quick screens done in court can be inaccurate
 - If a quick screen comes back positive for substances, and if your client is adamant that the test is incorrect, then ask the court to order DFCS to conduct full panel by an actual lab as soon as possible to confirm the results.
- Compare the cut-off levels for each substance with the amount reflected in your client’s system
 - If it is very close, then make the argument that there may have been contamination, and ask for a full panel to be done.
- Clients Taking Prescription Medications
 - Clients with mental health diagnoses or physical health issues are often taking prescription medications to manage these issues.
 - Try to identify compounds/substances which may interfere (“interferents”) and/or cross-react (“cross-reactants” or “CRs”) (e.g. pseudoephedrine, metformin, methylphenidate, labetalol, bupropion, trazodone, fluoxetine, etc.), because even if they do not create a false positive for other substances, they may show up in reaction with something else.

Considerations when Opposing Counsel is Attempting to Admit Information from an Assessment or Evaluation

- If there is any information within the report that is unclear or doubted by any of the parties, then the person/agency who administered the assessment/evaluation should be called in to testify. This includes the CAA's "speculation" that an assessment or evaluation's recommendations are insufficient or inaccurate.
- Do not allow a case worker to interpret or give their opinion about the content or recommendations of the assessment or evaluation.

Testimony of the Person Who Conducted the Assessment or the Counseling

- Send a formal subpoena if you feel it necessary—don't depend on the SAAG to have the person present to testify.
- Questions to ask during testimony of the person who has conducted the assessment or the counseling:
 - If they are being asked to provide recommendations, how familiar with, or what knowledge do they have, of DFCS' current foster care policy?
 - Before offering their recommendations, has this person observed and provided services to both the parent and the child together? Observing only a couple of times for one hour each time is not sufficient.
 - Ask what specialized education or training (not experience) they received in school or thereafter that qualifies him/her to conduct assessments and give recommendations in cases involving child welfare and/or parents with disabilities.

Be Aware of the Guidelines of American Psychological Association

The American Psychological Association (APA) guidelines have emphasized:

- When evaluators have no disability training, the need for consultation with disability specialists is heightened.
- When an examinee possesses a cultural, racial, or other background with which psychologists are unfamiliar, psychologists must prepare for and conduct the evaluation with the appropriate degree of informed peer consultation and focal literature review.
- According to the APA's guidelines for psychological evaluations in child protection matters, "Particular competencies and knowledge are necessary to perform psychological evaluations in child protection matters so that adequate and appropriate psychological services can be provided to the court, state agencies or other parties."



How to Handle Virtual Hearings

*Tips,
Techniques, and
Strategies*

Considerations When Determining Whether to Conduct a Hearing In-Person v. Virtually

Complex case with a lot of exhibits

Challenging witnesses or several witnesses

Client's access to WiFi and/or a cellular access

Client's mental state at the time of the hearing

Your client's physical state at the time of the hearing

Your client's transportation options

Strongly suggest all CONTESTED hearings be conducted IN-PERSON

Even if it is likely that the other parties will object or that the judge will deny the request for in-person, preserve the record by still asking for it.

Planning and Preparing Documentary Evidence for Introduction During in a Virtual Hearing

- Know Your Court's Requirements:
 - Each court and each judge has different requirements when it comes to how, when, and to whom you need to submit your exhibits.
 - If any of opposing does not adhere to the court's requirements, then object to the admissibility of the evidence based on your inability to review and prepare
- Actual Introduction of the Document:
 - Instead of saying "I am showing the witness, what has been pre-marked as Respondent's Exhibit 'A' for identification purposes."
 - You will say "I am putting up on the screen, what has been pre-marked as Respondent's Exhibit A for identification purposes" so that your court reporter still can take down the exhibit and make sure that it is a part of your record. You may have to ask the judge to make you the "host" so that you can share your screen.
- Formatting, Labeling, and Highlighting Your Exhibits:
 - It is best to convert each of your exhibits to PDF prior to submitting them.
 - Most courts will require you to label each exhibit before you submit them to the clerk's office. Depending on what application you have you need to figure out a way that you can at least insert some indicator at the top right of each document indicating your party and the letter/number of the exhibit.
 - It might be easier to save each document as a separate file and attach them separately in one email to the clerk's office.
 - If you have a document with a lot of information, for example medical records, then try to highlight or "call-out" ahead of time the pertinent sections that you know you will want the witness and the judge to pay attention to.