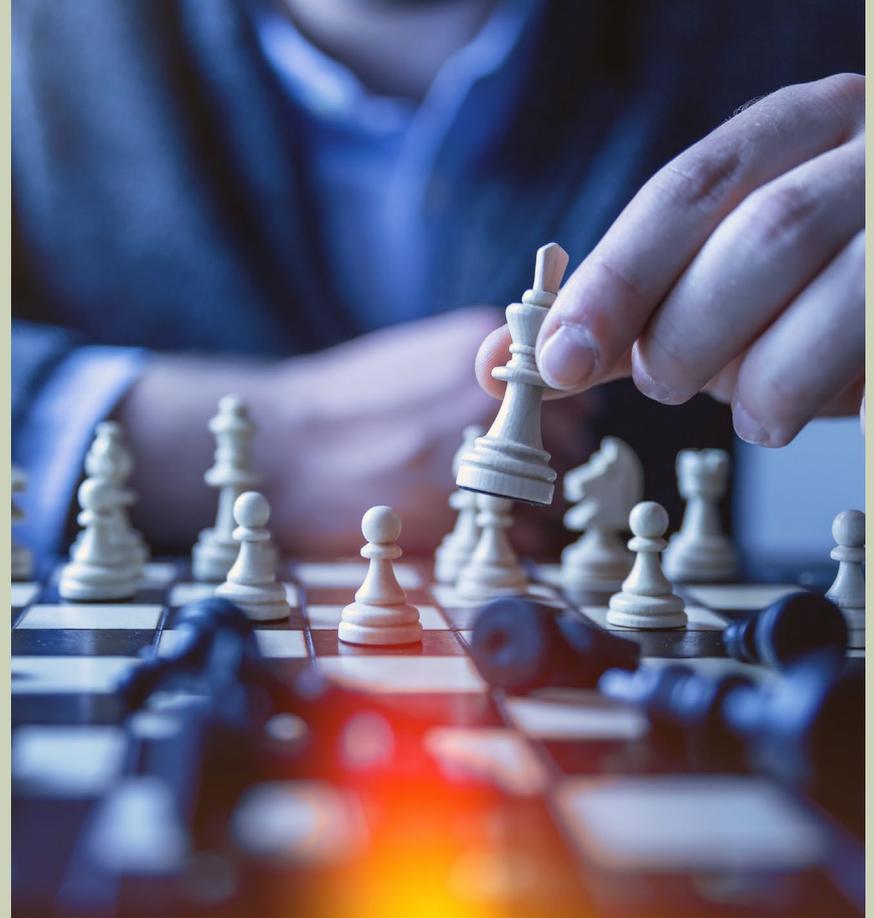


# CONTESTING DISPOSITION

Attorney  
Alaina Fahley,  
Appleton Trial

# WHAT IF COLLABORATION DOESN'T WORK?

- What if you have had multiple meetings on case planning? What if you are dealing with unreasonable DHS staff and/or prosecutors?



# DISPOSITION

- Assuming you have either had a fact-finding hearing, your client was defaulted, or your client has entered a plea (to original grounds or amended grounds), the next and crucial step is disposition.
  - If you have only practiced criminal defense, disposition is somewhat similar to sentencing. This is the phase in which the judge determines what conditions your client will be ordered to follow, what services the Department should be providing, and placement for the child.
  - Governed by subchapter VI of chapter 48 (48.33 through 48.375)



# DISPOSITIONAL REPORT

- Court reports are required under sec. 48.33. Can be oral for in-home placements. If out-of-home, should be in writing.
- They should include:
  - Social history of the child
  - A recommended plan of rehabilitation or treatment and care for the child which employs the *least restrictive means* available to accomplish the objectives of the plan
  - A description of specific services or continuum of services which the agency is recommending the court order for the child or family
  - A statement of the objectives of the plan, including any behavior changes desired of the child
  - A plan for provision of educational services (see also ESSA)
  - If the agency is recommending parent/guardian participate in mental health treatment, anger management, individual or family counseling or parent development training or education, *a statement as to the availability of those services and as to the availability of funding for those services.*

# DISPOSITIONAL HEARINGS

- Sec. 48.335(3): Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.
  - If placement is in foster care, group home, RCC, home of relative, etc (i.e. if out of home):
    - Continued placement of the child would be contrary to the welfare of the child.
    - Department has made *reasonable efforts* to prevent removal of the child
    - If perm plan prepared, department has made *reasonable efforts* to achieve permanency goals (i.e. reunification, guardianship, etc.)
- Petitioner bears burden of proof by the greater weight of the credible evidence for purposes of dispositional hearings. *In Interest of T.M.S.*, 152 Wis.2d 345, 448 N.W.2d 282 (Ct. App. 1989).

# CORNERSTONE ADVOCACY

- ***Placement*** arrangements that support a child's connection to their family and community;
- ***Visitation*** that enables parents and children to spend time together in ways that mirror their family life;
- ***Service planning*** that builds on a family's strengths as well as their needs; and
- ***Conferencing*** opportunities that empower parents to meaningfully participate in service planning for themselves and their children.



# CONTESTING DISPOSITION

- Consider filing an alternative dispositional report.
- Consider filing either a letter memo or written objection to the state's report prior to the hearing (you may need to discuss adjourning the dispositional hearing if the court will allow).
- Address the main cornerstones in these reports.
- What is the department requesting? What does the discovery support?
- What conditions are appropriate? What does not seem appropriate?
- What about alternative placement?

This advocacy doesn't end with a dispositional hearing, especially in out of home cases. Consider these concepts as they apply to post-dispo hearings such as change in placements, revisions, etc.

Continue to tell your client's story at dispositional hearing, at perm plan, etc.

Consider requesting an earlier review hearing.