

Motion Practice: Trial and Disposition Motions

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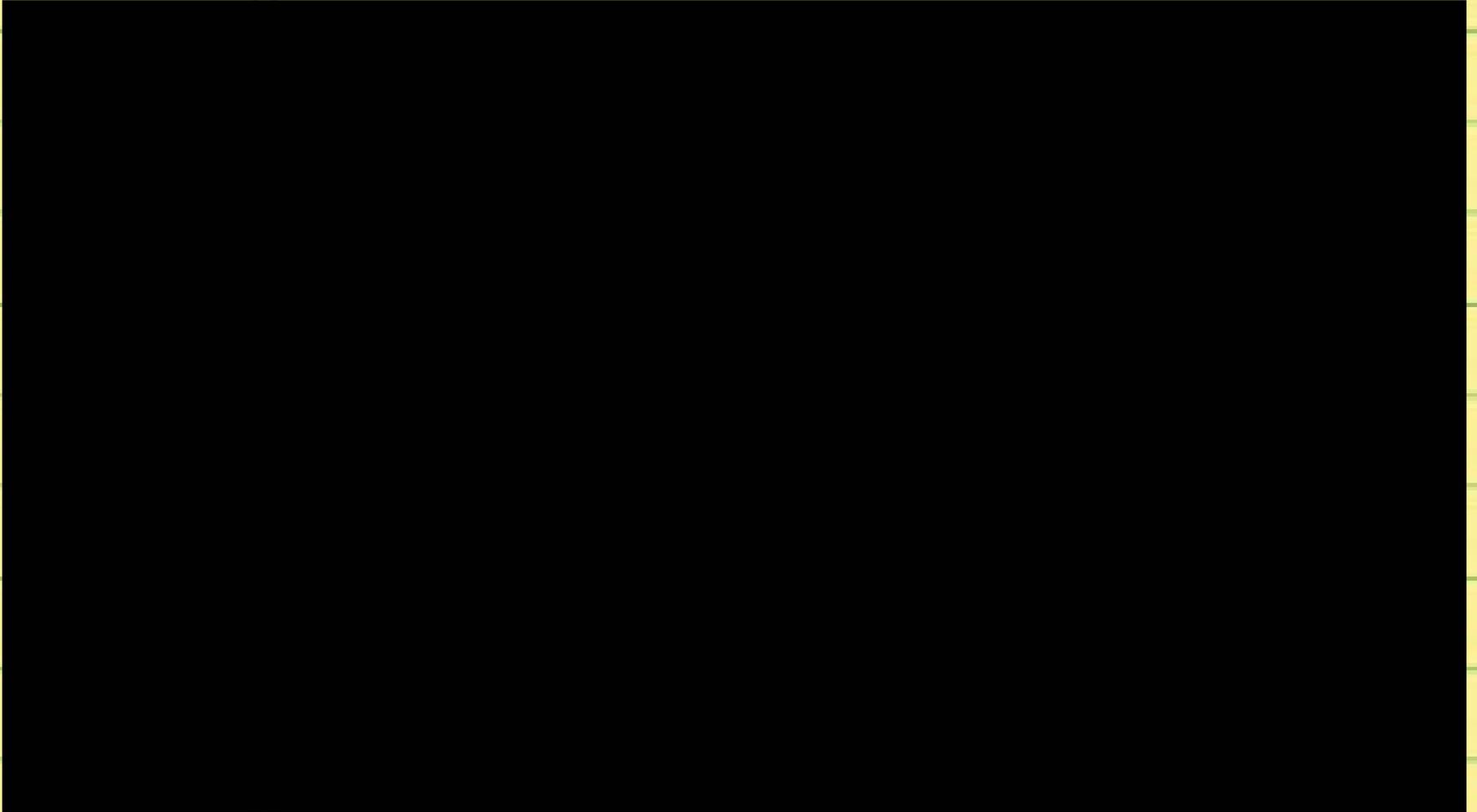
Learning Objectives

- Learn pre-trial motions to best position a case for trial
- Learn pre-disposition motions to best position a case for dismissal at disposition

Agenda

- Pre-trial Motions:
 - At or before hearing on petition
 - In limine
 - Other pre-trial
- Pre-disposition motions
- Discussion/Questions/Case Study

Set the stage



Templates

Go!

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Case Outline

Past Training Materials

Prepare and File Motions

Constitutional Challenges

Deposition Information

Initial Motions & Forms to File

[Authorization to Appear](#)

[Consolidation of CHIPS cases with TPR Cases](#)

[Demand for Discovery](#)

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[Demand for Witness List](#)

[Discovery Demand TPR](#)

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[Respondent's Request for Production of Documents](#)

Timing, generally

- WIS. STAT. § 48.297

At or Before Hearing on Petition

- (not really a motion, but...):
- Preserve right to jury trial
- WIS. STAT. §§ 48.243(1)(g),
48.30(2)



At or Before Hearing on Petition

- Substitution of judge. WIS. STAT. § 48.29.



At or Before Hearing on Petition

- Motion to vacate default judgment
 - WIS. STAT. § 806.01
 - *Johnson v. Allis Chambers Corp.* 162 Wis. 2d 261 (1992)

At or Before Hearing on Petition

- Motion for visitation
 - Reinstate, increase, provide transportation, family visits
 - WIS. STAT. § 48.355(3)
 - but check local practice (CHIPS or TPR case; if CHIPS—ancillary rep?)

At or Before Hearing on Petition

- Motion to dismiss insufficient petition
 - *In the Interest of: Courtney E.*, 184 Wis. 2d 592 (1994)



At or Before Hearing on Petition

- Access to CHIPS File. WIS. STAT. §§ 48.396, 48.78.



In Limine



In Limine

- No "but [he/she/they] had a lawyer to help" in the CH IPS case



In Limine

- No "best interests"
 - *In the Interest of: C.E.W.*, 124 Wis. 2d 47 (1985)
 - No best interests, generally, or with regard to specific items of CHIPS case (visits, placement, etc.)
 - Hearsay, not relevant. WIS. STAT. §§ 48.415, 904.01, ch. 804, 904.02

In Limine

- How much did the foster parent get?



In Limine

- Force corporation counsel/DA and GAL to sit separately

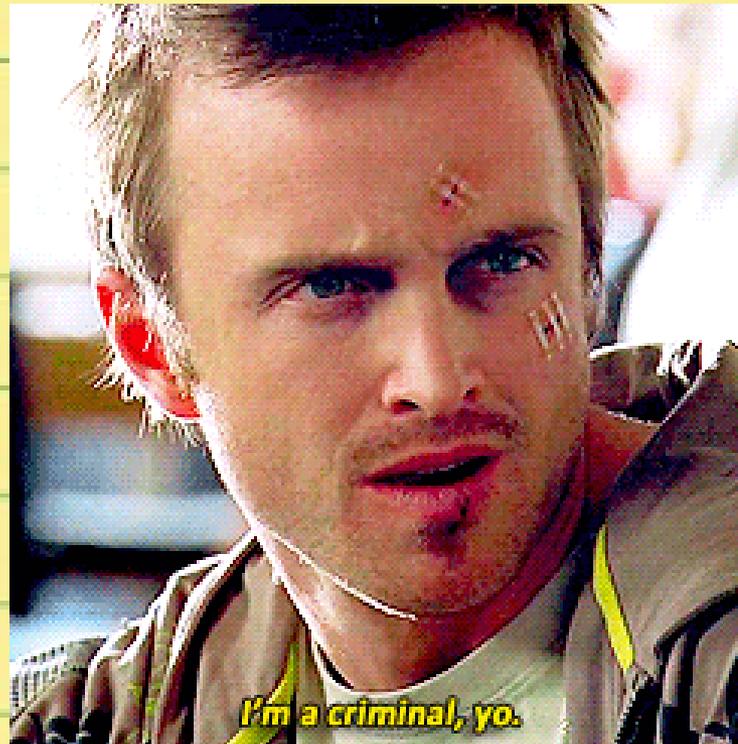


In Limine

- No comment on whether or how parent litigated CHIPS case
 - Privileged
 - Not relevant (not required to provide “reasonable efforts” of “case management”)

In Limine

- Prohibit calling a witness with a criminal record if not first disclosed.



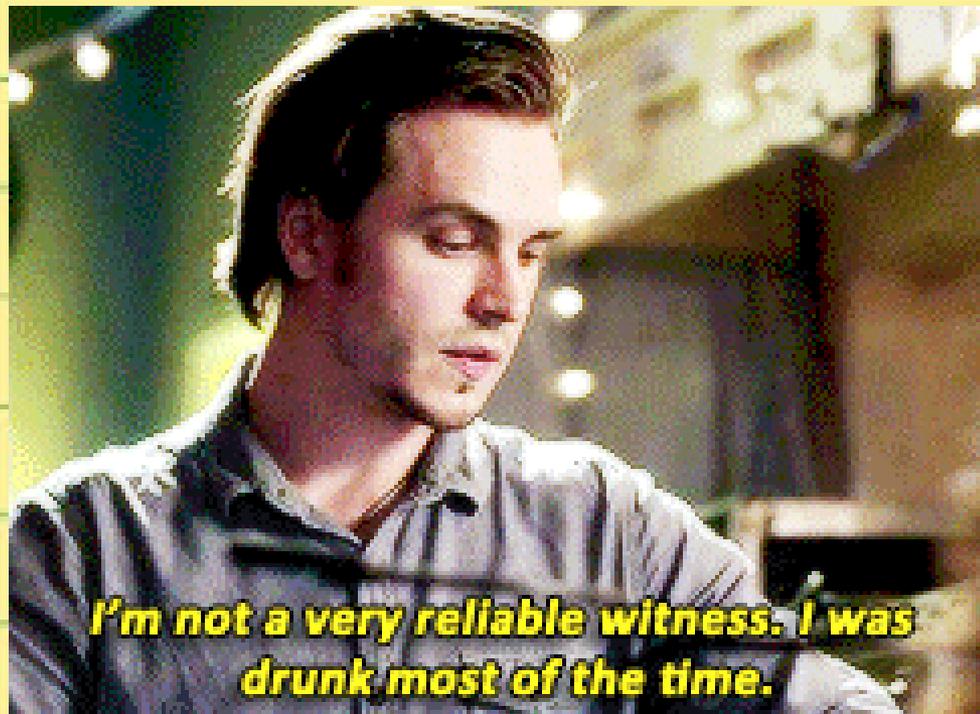
In Limine

- Aligned parties to share preemptory challenges.
 - *In the Interest of: C.E.W.*, 124 Wis. 2d 47 (1985)



In Limine

- Prohibit other acts in accordance with WIS. STAT. §§ 904.01-904.04



In Limine

- Prohibit Corp Counsel/DA and/or GAL from introducing anything not disclosed
 - But remember, civil discovery rules...

In Limine

- Set rules/practices for sidebars, objections, etc.



In Limine

- Sequester witnesses.
 - But they get their person...



In Limine

- Record the proceedings



In Limine

- No reference to “public defender” or “assigned counsel”



In Limine

- Telephone testimony at trial. WIS. STAT. §§ 807.13, 885.60.



In Limine

- Other ground-specific motions:
 - Continuing CHIPS (all or nothing on CoR?)
 - Failure to assume (comment on substantial parental relationship?)
 - Abandonment (time periods?)

In Limine

- Define chronology of case:
 - As of date of petition?
 - But see *Stacey P.*, 2012 Wis. App 88, slip op
 - J.R. implications?

Other pre-trial

- Sever. WIS. STAT. §§ 803.06(1), 805.05(2)



Other pre-trial

- Adjournment



Other pre-trial

- Challenge venue. WIS. STAT. § 48.415.



Other pre-trial

- Motion for visitation
 - Reinstate, increase, provide transportation, family visits
 - WIS. STAT. § 48.355(3)
 - but check local practice (CHIPS or TPR case; if CHIPS—ancillary rep?)

Other pre-trial

- Motion to interview child.



Other pre-trial

- Define the scope of discovery/compel discovery.
 - Shannon R. and Stacey P.
 - Prosecutor as witness? See ch. 48, 59, Wisconsin Statutes; Clean Hands Doctrine

Pre-disposition

- Motion for visitation
 - Reinstate, increase, provide transportation, family visits
 - WIS. STAT. § 48.355(3)
 - but check local practice (CHIPS or TPR case; if CHIPS—ancillary rep?)

Pre-disposition

- Motion to interview child



Pre-disposition

- Take judicial notice of trial evidence.
 - Wis. Stat. § 48.299



Pre-disposition

- Even if rules of evidence don't apply, try to define it anyway?
 - Wis. Stat. § 48.299



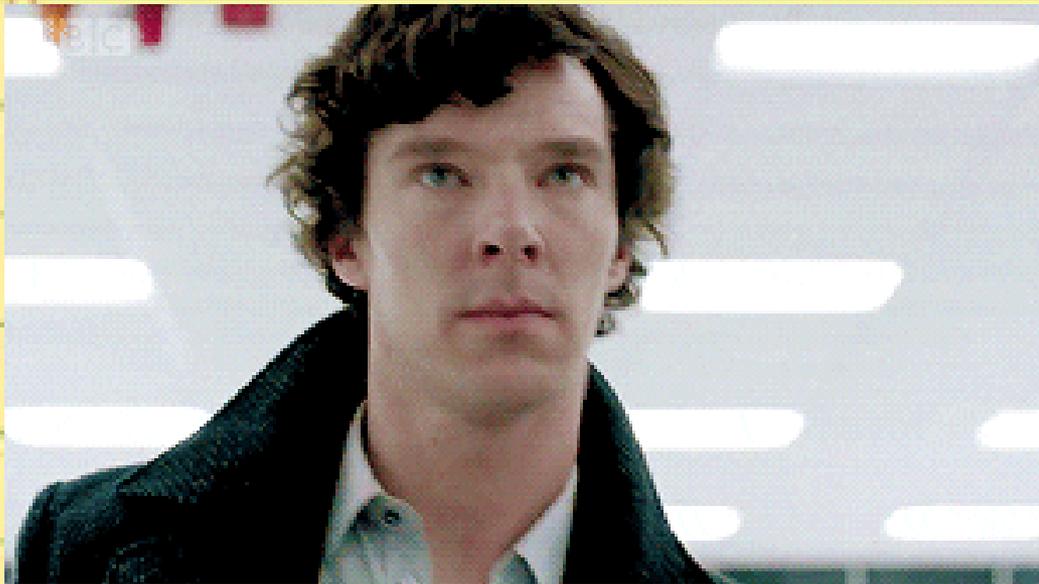
Pre-disposition

- Enlarge time?
 - Wis. Stat. §§ 48.315, 48.424(4);



Pre-disposition

- Define the timeline for evidence.
 - *Stacey P.*



Discussion/Questions/Case Study

