

APPENDIX C

SAMPLE QUESTIONS/TESTIMONY

DCS WORKER ABOUT 310 REPORT CONTENTS

Q: How did you come to be familiar with that family?

A: On or about July 5th of this year, DCS received a 310 report, alleging that the parents of the children...

COUNSEL: Objection, hearsay.

THE COURT: Any response?

DCS: Your Honor, it's how DCS got involved with it. I believe it comes in as a part of her preparation for the case and how she was first assigned to the case.

COUNSEL: I'm not familiar with a preparation of case exception to hearsay. If she wants to state that she received a 310 and that's how she got involved, that's fine. If she wants to go into the contents of the 310, that's clearly hearsay.

THE COURT: Anything else?

DCS: No, Your Honor.

THE COURT: Sustained. Next question.

STATEMENT AGAINST INTEREST...WHEN DECLARANT UNAVAILABLE

Q: Did you speak to the father about the allegations?

A: Yes, and he told me that there was some...

COUNSEL: Objection, hearsay.

DCS: Your Honor, I believe these are statements against the interest of a party and ...

COUNSEL: Your Honor, the statement against interest is when a client is unavailable. This client is here and able to testify.

THE COURT: Overruled.

CHILD'S THERAPIST AS TO CHILD'S TRUTHFULNESS

Q: Did you speak to the child about the allegations?

A: [Child's therapist] Yes, I interviewed her in my office.

Q: Did you believe she was telling the truth?

COUNSEL: I object. She can't testify as to whether the child is telling the truth.

CHILD TESTIFYING AS TO HIS/HER OWN TRUTHFULNESS

Q: Did you tell the truth here today?

[The child]: Yes.

COUNSEL: Objection and move to strike. Witnesses can't testify as to whether another witness is telling the truth. This includes their own opinion on their own truthfulness. 704(b)'s prohibition is broad enough to encompass a witness's statement of an opinion on his own truthfulness, consistent with earlier Indiana law. *Connell v. State*, 470 N.E.2d 701, 704 (Ind. 1984).

STIPULATING CHINS DOCUMENTS INTO EVIDENCE IN TPR HEARING

Your honor, I would like to submit the following documents into evidence by stipulation:

- a) Petition for CHINS (on each child if different)
- b) Plea agreement or Court order finding CHINS
- c) Review reports (redacted if necessary)
- d) Petition for Change of Permanency
- e) Order for Change of Permanency
- f) If relevant, all orders changing placement, expanding visits, decreasing visits, showing completion of services
- g) Transcripts of CHINS review, permanency hearings, etc. regarding efforts to have DCS place with relatives, DCS's representations regarding services, any information relevant to how/why the parents proceeded with services.

MOVING TO ADMIT DOCUMENTS WHEN DCS CASEWORKER ON STAND

- Q: I am handing you Respondent's exhibit ___, do you recognize that document?
Q: Is it the Petition/report/court order, etc. which was filed or ordered as against child/adult?
Q: Is it a true and accurate copy? (If redacted, is it true and accurate as redacted?)
Q: Did you rely upon it in your work with the family?
I move to admit.

Issues to consider:

1. You may get responses from DCS on doctrine of completeness for redacted documents, be ready to argue relevance/HIPPA/privilege/hearsay.
2. Documents are admissible as court records or as business records.
3. You are including them, in part, because without them the record is not complete for purposes of appeal.
4. If the judge excludes them, have them marked for identification and leave them in the record as submitted exhibits. The appellate lawyer will take it from there.