

### Steps for Impeachment by Prior Inconsistent

#### Statement:

Use this when a witness is lying or saying something different today than he did originally.

- **Commit** witness to current statement
- **Credit** the circumstances in which the prior statement was made (e.g., earlier in time, required to be accurate)
- **Confront** witness with earlier statement (read out loud and ask “did I read that correctly”?)
- **STOP & MOVE ON!**

### Steps for Impeachment by Prior

#### Omission:

Use this when a witness gave an earlier statement that did not include facts testified to today.

- **Commit** witness to current statement
- **Credit** the circumstances in which the prior statement was made & why it would include these facts
- **Confront** witness with earlier statement & ask if these facts are included in it
- **STOP & MOVE ON!\***

### Steps for Refreshing Recollection:

Use this when a witness cannot remember a fact.

- Establish that the witness cannot remember for the record. E.g. *Is your memory exhausted?*
- Establish that “something” will help the witness remember E.g. *Would looking at your dictation notes help you remember?*
- Ask permission from the Court to show the “something” to the witness
- Narrate showing the “something” to the witness
- Direct the witness to read to himself or review the “something” and look up when done
- Ask if reviewing the “something” has refreshed the witness’s memory
- Take away the “something”
- Repeat the original question

### Anatomy of a Trial Notebook

- Objections Cheat Sheet
- Foundations Cheat Sheets
- Final Witness and Exhibit Lists
- Sections for each potential exhibit: Affidavit; 51A’s and B’s; Service Plans; Court Investigation etc.
- Sections for each potential witness including witness contact information, questions and impeachment or refreshing documents
- Separate notebook for annotated dictation notes
- Sections for Opening and Closing
- Section for Relevant Case Law (including any prepared memoranda on legal issues)

**BREATHE!**

# Trial Preparation Timeline

## 4 - 6 Months Prior to Trial

- Talk with your mentor
- Obtain and review updated DCF file
- Obtain and review updated records from relevant collateral service providers
- Review all documents in your file (including your notes about court events)
- Draft chronology of the case
- Verify client's compliance with services
- Analyze settlement options
- Consider need for retention of expert
- If an expert is needed, file motion for funds

## 2 - 3 Months Prior to Trial

- Begin assembly of trial notebook
- Anticipate DCF's theory of the case
- Develop your theory of the case
- Make list of all potential witnesses and exhibits
- Schedule in-person meeting with parties to discuss witnesses, exhibits, potential stipulations of fact and settlement options
- File any necessary discovery motions
- Case analysis: determine issues to be litigated and how they can be proven or disproved
- Conduct legal research
- Begin drafting motions in limine
- Identify and interview witnesses
- If expert is retained, determine whether a report should be generated or whether testimony will be needed. If testimony is needed, request additional funds.

## 1 Month Prior to Trial

- Meet with client to prepare for trial/ discuss settlement options
- Obtain rulings on motions in limine
- Organize trial notebook
- Prepare redacted versions of exhibits
- File procedural motions
- Send subpoenas
- If a retained expert is testifying, provide statement of testimony to all counsel in compliance with Juv. Ct. R. 11(11)

## 1 - 2 Weeks Prior to Trial

- Prepare your witnesses
- Prepare closing argument
- Prepare opening statement
- Prepare direct examinations
- Prepare cross examinations
- Refine theory of the case
- Refine order of witnesses and exhibits
- Rehearse opening and closing

## Maintain Client Contact

- Your client is creating the facts you will present at trial - guide him towards the best outcome
- Inform client of trial strategy, legal issues and settlement options
- Maintain contact with child clients and their caregivers
- Your client is the best source of evidence and witnesses

## Time-Saving Tips

- ✓ Highlight Court Reports and other documents for objections when you receive them
- ✓ Organize DCF file and review as soon as you receive it
- ✓ Keep blank releases with you
- ✓ Maintain client contact
- ✓ Maintain contact with collateral service providers

Go Digital!  
Scanning your documents and storing them digitally saves time

There is no such thing as a stupid question. If you need help, please contact your mentor. You may also contact the CAFL Administrative Office at: 617-482-6212

**Disclaimer:** This is not intended to be an exhaustive list of steps or considerations in trial preparation. Each case is unique and your trial preparation should be adapted accordingly. Depending on the facts of your case, suggested timeframes and necessary steps will vary.