

Settlement

CAFL Appellate Panel Certification Training



Your Client



Jimmy (12 yo)

Preadoptive placement

Sibling in mom's care

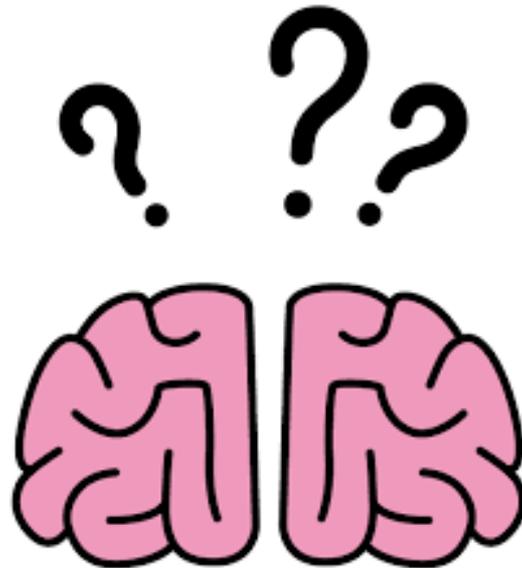
Tired of being a foster child

TPR; no parent-child
contact order

Goals for Session

1. Review mechanics of settlement
2. Identify environmental facts that affect outcomes & strategies to change them
3. Analyze risks and limitations of settlement options
4. Discuss strategies for drafting settlement documents that achieve client goals

Why settle?



Before you negotiate



thoroughly investigate



earn client's trust



incentivize opposing parties

The Options

Posttermination contact

Postadoption contact (a.k.a. “open adoption”)

Sibling contact

The Players

DCF

Prospective adoptive parent(s)

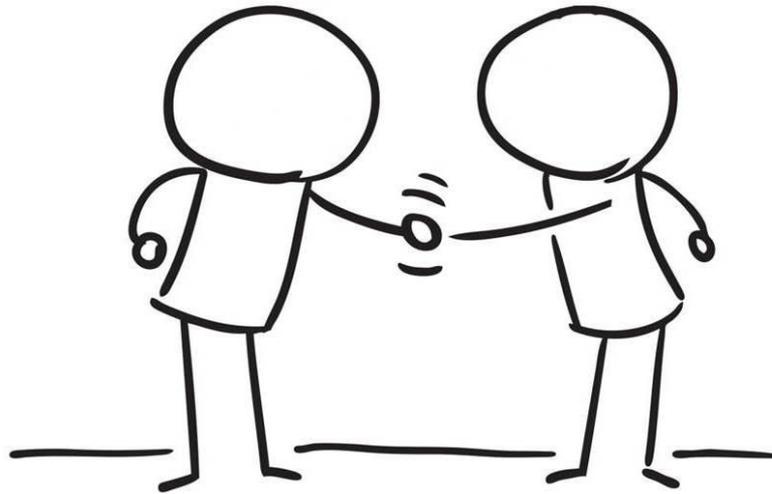
Child's counsel

Parents



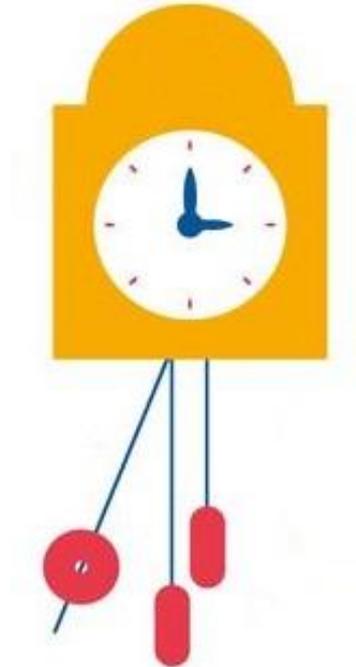
Factors That Affect Outcomes

Relationship between negotiators



Factors That Affect Outcomes

Time to negotiate

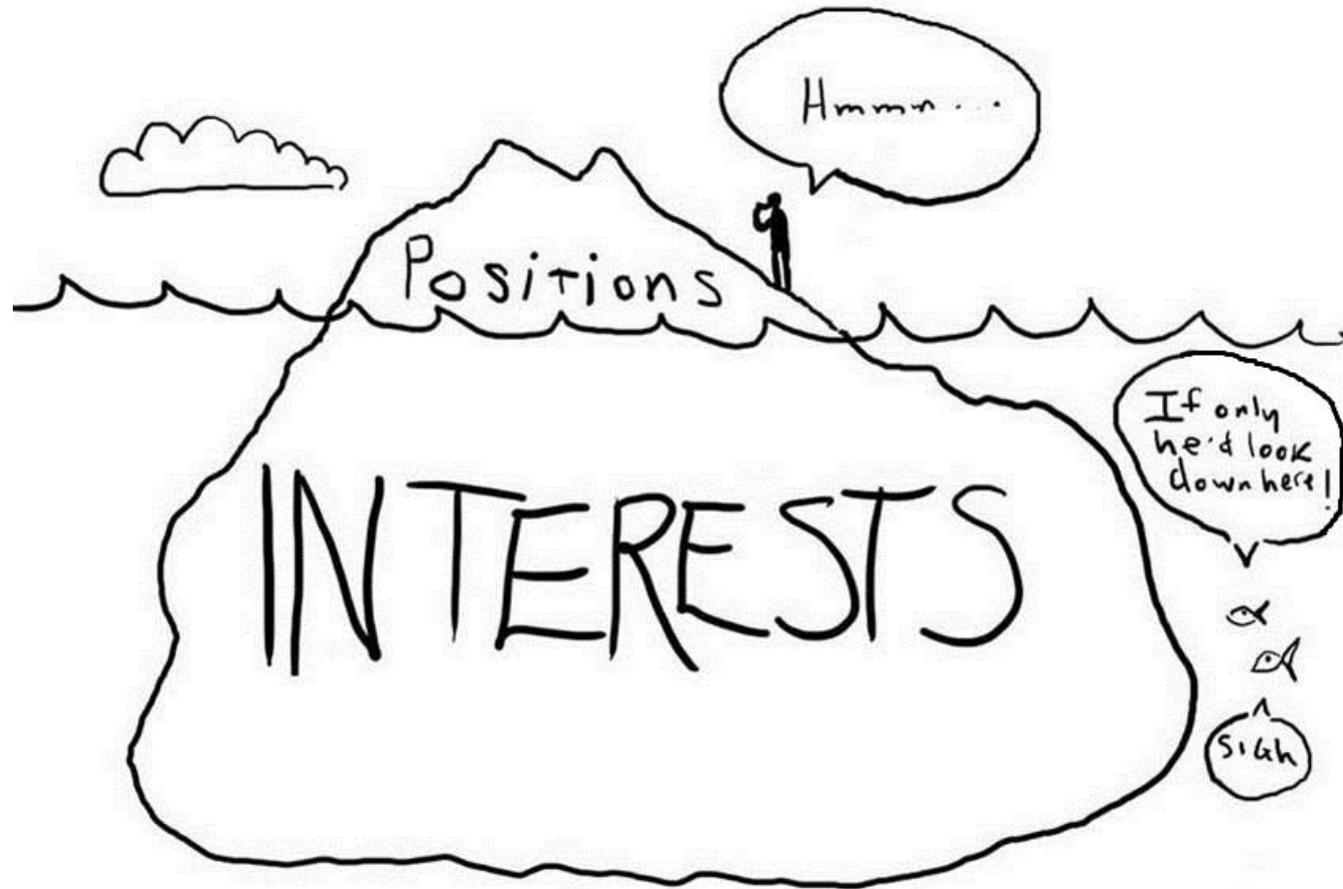


Factors That Affect Outcomes

Perceptions of litigants & lawyers



Getting to Yes: Understanding Interests



Getting to Yes: Strategy



Stipulation Withdrawing Appeal

Withdraw appeal & waive appellate rights

Stipulation Withdrawing Appeal

Process if adoptive placement fails

Process if adoption judge rejects postadoption
contact agreement

Stipulation Withdrawing Appeal

Incorporation & merger of posttermination
contact agreement

Incorporation of postadoption contact agreement

“Recruitment” Agreements

Specific recruitment obligations

Specific terms of postadoption contact

Posttermination Contact

G.L. c. 210, § 3(d)

Posttermination Contact Agreements

Duration of agreement

Contact permitted

Frequency, duration, supervision, location of visits

Rules and consequences

Child's wishes

Incorporation and merger into termination decree

Postadoption Contact (a.k.a. open adoption)

G.L. c. 210, § 6C

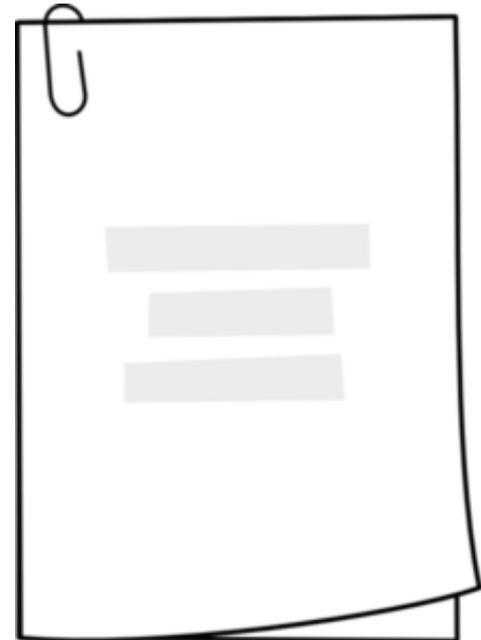
Postadoption Contact Agreements (a.k.a. Open Adoption Agreements)

G.L. c. 210, § 6C(c) language

Specific terms of contact

Child's wishes

Incorporation into termination
and adoption decrees



Postadoption Contact Agreements (a.k.a. Open Adoption Agreements)



Remove vague language that renders the agreement meaningless

Remove language that gives the adoptive parents too much discretion

Modification & Enforcement

G.L. c. 210, § 6D

Settlement Agreements Under the Indian Child Welfare Act

25 U.S.C. § 1913

25 C.F.R. §§ 23.124 - 23.128

Sibling Contact

G.L. c. 119, § 26B(b)



Approval Process – Appeals Court

Motion for Stay of Appellate Proceedings

Motion for Leave to Seek Trial Court Approval of
OAA Pursuant to G.L. c. 210, § 6C

Approval Process – Trial Court

Trial Court must find:

in child's best interests

fair & reasonable

knowing & voluntary

Approval Process – Appeals Court (again)

Motion to Withdraw Appeal (Voluntary)/
Stipulation for Dismissal





There are no assurances

Questions?