

Principled Negotiation

- ▶ Principled negotiation is a negotiation strategy that emphasizes interests rather than differences.
- ▶ It is a method of negotiation that involves thinking creatively to generate a solution that advantages all parties.
- ▶ Principled negotiation is especially helpful when an imbalance of power exists between the parties.

Negotiation in Adjudications and Dispositions

- ▶ What can you negotiate?
- ▶ When should you negotiate?
- ▶ How should you negotiate?

N.C.G.S. 7B-902

Consent judgment in abuse, neglect, of dependency proceeding.

Nothing in this Article precludes the court from entering a consent order or judgment on a petition for abuse, neglect, or dependency when all parties are present, the juvenile is represented by counsel, and all other parties are either represented by counsel or have waived counsel, and sufficient findings of fact are made by the court.

Disposition and Review Hearings

Parties may submit proposed consent orders, but the order is the court's, and the court will be responsible for the contents.

When to Negotiate

- ▶ Always negotiate; client decides when to settle.
- ▶ Always be prepared; negotiation is not a substitution for preparation.

Christi Clay

Typical negotiation occurs when DSS attorney sends e-mail or proposed order with draft findings of fact and conclusions of law. Parties haggle over the language and the inclusion/omission of various facts.

Adjudication Findings of Fact

- ▶ On 12/28/08, Christi left the children home alone based on the assurance by Dustin Davie that he was on his way to the home to supervise the children.
- ▶ After Christi left the home, Alec and CeCe found a loaded gun located under the mother's bed. The gun belonged to Dunstin Davie and Christi was unaware that the gun was in the home.
- ▶ Alec accidentally shot CeCe. Rowan called 911. The police found cocaine and drug paraphernalia in the home which belonged to Dunstin Davie. Christi was unaware that there were any drugs in the home.
- ▶ Children are abused and neglected.

Principled Negotiation

- ▶ Use the 4 Getting to Yes principles of Negotiation:
 1. separate the people from the problem
 2. focus on interests not positions
 3. create options for mutual gain
 4. insist on using objective criteria

How to Negotiate

- ▶ Break down case into core components:
 1. Findings that support adjudication of status of child;
 2. Conclusion/decreed of adjudication of status of child;
 3. Findings that support each respondent's disposition;
 4. Conclusion/decreed of each respondent's disposition.

Christi Clay

What adjudication does DSS want?

Can your client give them that?

Christi Clay

Yes.

No findings are needed regarding Christi for adjudication; evidence supports the children being adjudicated as abused children pursuant to 7B-101(1)(b) and as neglected children pursuant to 7B-101(15) because of the actions of Dustin Davie.

Findings and Conclusions for Adjudication

- ▶ On 12/28/08, Alec and CeCe found a gun under their mother's bed. The gun was loaded and unsecured. It belonged to Dunstin Davie.
- ▶ Dunstin Davie was supposed to be supervising the children but was not in the home.
- ▶ Alec accidentally shot CeCe. Rowan was in the home and saw CeCe after she was shot.
- ▶ Children are abused and neglected.

Traps for the Unwary

- ▶ If you consent to adjudication but one respondent is missing, DSS must present evidence to support their petition.
- ▶ If you consent to adjudication, DSS and GAL may try to get in the information for disposition, especially through the reports.



Disposition Findings

- ▶ Start with the findings that are supported by the objective evidence;
 1. if it is a positive, include documentation, especially by non-interested person.
 2. If it is a negative, include softeners.
- ▶ Try to identify the crux of the matter; often parties agree on the facts but it is the interpretation that is in contention.

Pointers

Divide and conquer:

1. GAL AA and volunteer;
2. SW and agency attorney;
3. Child and GAL.
