

LEGAL ETHICS IN DEPENDENCY PRACTICE
SCENARIO #2

Sally Henson – Child
Martin Lowery – Child
Rita Smith – Mother
Mike Lowery – Father of Martin

Ronald Henson – Father of Sally
Lori Hill – Guardian Ad Litem
Audrey Johnson – GAL Attorney
Luke Waters – Attorney for Mike

On March 23, 2004, Sally Henson, age 3, and Martin Lowery, age 2 were removed from their mother, Rita Smith, due to medical neglect. Martin had a respiratory infection and the mother failed to seek treatment. Martin ended up in the hospital with pneumonia. At that time, Martin's father, Mike Lowery was living out of state in South Dakota, exact whereabouts unknown. The location of Ronald Henson, Sally's father, was also unknown. Judge Rogers sheltered the children and appointed Lori Hill as Guardian Ad Litem. Audrey Johnson, GAL attorney was assigned the case.

Shortly after the shelter, the mother, Rita, disappeared. Therefore, DCF needed to conduct a diligent search for all of the parents. DCF was unable to locate Rita or Ronald with the diligent search. However, DCF located Mike and served him for an arraignment hearing. DCF alleged medical neglect by the mother and abandonment by the fathers in the dependency petition.

At the arraignment, Mike appeared and was appointed an attorney Luke Waters. Luke told Mike to consent to the dependency petition and Mike advised the judge that he would move to Florida so he could get custody of his child. Judge Rogers set the matter for a disposition hearing.

Before the disposition hearing, Lori met with Mike to discuss the case. Lori said that she was concerned that Mike had two arrests four years before for cocaine possession. Mike said that it was in the past and "none of her business." Lori was very upset with this conversation and really began to dislike Mike. Lori told Audrey that she was very concerned for Martin's safety with Mike. Audrey responded, "Just tell me what you want, you know Judge Rogers will agree to whatever we want, his mother was a former guardian ad litem."

At the disposition hearing, DCF presented a case plan to the judge which had tasks for Mike to complete a parenting course, maintain stable housing, maintain sufficient income to meet the child's needs, and visit with the child. Audrey requested that the case plan include a substance abuse evaluation, random drug screens, and a psychological evaluation. Audrey said it was criminal for DCF to have presented such an inadequate case plan to the court. Luke objected stating that there has been no proof that he has abused any drugs and that his last drug charge was four years before. Luke said that there was no basis for the mental health evaluation. Audrey responded that the GAL was concerned about the criminal charges and that Mike would not discuss the issue with Lori. Judge Rogers accepted the case plan with the additional tasks by the GAL.

Six months passed. DCF's diligent search never located Rita or Ronald. Mike maintained a stable and suitable home, worked a steady job, and made sufficient income. His substance abuse evaluation concluded that Mike did not need any treatment. All ten drug screens which Mike took were clean. The mental health evaluation did not indicate any need for treatment. Mike visited with Martin, but missed a two visits due to a conflict with his work schedule. He completed a parenting course, except he never received a certificate because he failed to pay for some of the classes.

DCF filed a petition to terminate all of the parent's parental rights. DCF submitted an affidavit of diligent search for Rita and Ronald. However, the affidavit did not indicate whether DCF contacted the armed forces or child support enforcement for Rita and Ronald. The court conducted an advisory hearing and entered a consent to the termination of parental rights petition regarding Ronald and Rita. Judge Rogers set the TPR trial for Mike.

After the advisory hearing, a new CBC case manager was assigned to the case. He thought Mike was doing a great job and told the DCF attorney to dismiss the petition regarding the child, Martin. Lori heard about this and quickly had Audrey file a termination of parental rights petition. Audrey requested Lori to ask Mike for his current pay stubs and a copy of his work schedule on the dates that he missed visits.

At the trial, it was revealed that Mike had completed his case plan. The case manager paid for Mike's parenting classes, and Mike had a certificate of completion. Audrey objected to the introduction of the certificate because it was hearsay. The judge sustained the objection. Audrey took testimony from Lori that the children were bonded to each other and to their foster parents. Lori admitted that Martin got along well with Mike. Mike testified that he would take both siblings to keep them together.

Audrey argued in her closing argument that Mike had failed to substantially comply with the case plan by failing to make all of the visits with Martin and his failure to provide a completion certificate for the parenting course. Luke argued that Mike had completed his case plan and had a good relationship with his child. Judge Rogers indicated that he was taking the case under advisement.

After the trial, Audrey stayed to talk to Judge Rogers. The judge said, "You know you have a weak case on this guy." Audrey responded, "He technically failed to comply with his case plan and the GAL is very concerned about the child's safety."

Judge Rogers entered an order terminating parental rights of all the parents.

1. What are the ethical issues in this scenario?
2. What rules dictate Audrey's conduct?
3. What could Audrey have done differently?