

CAFL NEWS

Volume I, Issue II

April 2017

Your place for CAFL news, updates, training notices and more.

Dear CAFL News Readers,

With Spring upon us, we wanted to thank everyone for their dedicated representation to families and children in Massachusetts over the busy winter. Throughout April, CAFL will be training close to 60 new private panel and staff attorneys. These attorneys will be joining you in courts throughout the state. Thank you to the many attorneys and social workers who have volunteered their time to help these lawyers hit the ground running on these important cases. - CAFL Training Unit

Upcoming Trainings

Massachusetts Juvenile Bar Association Annual Conference

May 4-5, 2017

Sturbridge Host Hotel & Conference Center – Sturbridge

For registration visit the JBA website: <http://massjba.org/annual-jba-conference/>

Approved for CAFL/CLE credits: May 4 (2 CLE credits); May 5 (6 CLE credits)

5th Annual Legal Services Conference 2017

May 8, 2017 – 9:30 am – 4:30 pm

MCLE – Boston

For further information and registration, visit the MCLE website <https://www.mcle.org/product/catalog/code/2170226P01>.

Approved for 6 CAFL/CLE credits

(NOTE: WEBCASTS NOT APPROVED FOR CAFL/CLE CREDITS)

The Role of the Defense Counsel in Confronting Science Based Prosecutions/Experts in C&P Cases

May 11, 2017 – 1:00 – 3:00 pm

Springfield Juvenile Court (Courtroom 1) – Springfield

RSVP to CAFL Resource Attorney Michael Greenberg (Michael@greenberglawma.com).

Approved for 2 CAFL/CLE credits

School Stability Education Law Training

June 1, 2017

Hadley Juvenile Court

Please RSVP to resource attorney Sarah Schooley sschooleylaw@gmail.com.

“Justice will not be served until those who are unaffected are as outraged as those who are.”
—Benjamin Franklin

Upcoming Trainings (cont.)

AFCC 54th Annual Conference: Turning the Kaleidoscope of Family Conflict into a Prism of Harmony

May 31 – June 3, 2017

Sheraton Boston Hotel, Boston

For further information and registration, visit the AFCC website <http://www.afccnet.org/Conferences-Training/AFCCConferences/ctl/ViewConference/ConferenceID/92/mid/615>. Approved for 8 CAFL/CLE credits

17th Annual Youth at Risk Conference

June 9, 2017 – 7:45 am – 3:45 pm

Salem State University (North Campus) – Salem

For further information and registration, visit the Salem State website <http://www.salemstate.edu/community/28926.php>.

Approved for 6 CAFL/CLE credits.

Legislative History 2017

June 20, 2017– 10: 00 am - 12:00 pm

Social Law Library

For further information and registration, visit the Social Law Library website www.sociallaw.com/legislative2017

Approved for 2 CAFL/CLE credits.

Announcements

CPCS Awards Ceremony

You are cordially invited to the 2017 Committee for Public Counsel Services awards ceremony at the John Adams Courthouse, 1 Pemberton Square, Boston Tuesday, April 25, 2017 — 5:00 – 7:00 p.m. **RSVP here** <https://www.eventbrite.com/e/2017-annual-awards-ceremony-tickets-32884324901>.

Proposed Amendments to Trial Court Rule VI Uniform Rules for Permanency Hearings

The Trial Court is seeking public comments on proposed amendments to Trial Court Rule VI governing permanency hearings. The amendments are designed to ensure compliance with changes to federal law, including the 2008 Fostering Connections to Success and Increasing Adoptions Act. The proposed amendments seek to ensure greater participation by youth in planning for their futures, both in and out of court. To review the proposed amendments, see <http://www.mass.gov/courts/case-legal-res/rules-of-court/rule-changes-invitations-comment/ic-permanency.html>. The deadline for submitting comments is **May 26, 2017**.

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Child Requiring Assistance Certification Training

CAFL is currently accepting applications for our Child Requiring Assistance Certification Training to be held on July 18 and 19, 2017 at the offices of Community Legal Aid, 405 Main Street, Worcester, Massachusetts. This training is for attorneys new to CAFL who are not yet certified to represent children and parents in CRA cases. If you are already a CAFL-CRA certified attorney, please feel free to share the application link with your colleagues. Information and the application can be found here: <https://www.publiccounsel.net/cafl/training/>. The application deadline is **May 1, 2017**.

ABA Announces a New Resolution on Discrimination in Child Welfare Cases

In February 2017, the American Bar Association (ABA) passed a resolution recommending an overhaul in state laws and regulations to aid in the prevention of discrimination in child welfare cases as a result of a parent's disability. The proposition recommends "requiring a showing, by clear and convincing evidence, of a causal nexus between the disability and a harm or an imminent risk of harm to the child that cannot be alleviated with appropriate services and supports and other reasonable modifications." The Resolution and Report can be found on the ABA website at:

http://www.americanbar.org/content/dam/aba/administrative/mental_physical_disability/114.authcheckdam.pdf.

This new resolution can be helpful to attorneys arguing that DCF is alleging unfairly that a parent is unable to parent merely because they have a disability. You also may consider citing to this policy when seeking specific services or visitation schedules that accommodate a parent or child's disability. For more information about DCF's obligations to provide accommodations to parents or children with a disability under the American with Disabilities Act and Section 504 of the Rehabilitation Act, see the US DOJ/HHS Joint Technical Assistance Bulletin at https://www.ada.gov/doj_hhs_ta/child_welfare_ta.html. See also the DOJ/HHS Joint Letter of Findings against Massachusetts DCF in the Gordon case at https://www.hhs.gov/sites/default/files/mass_lof.pdf.

Self Care Tip

Exercise reduces stress and helps people cope with high-stress jobs. This month's self care tip is about how to make time for physical activity in your busy practice. Research tells us that "[w]hen you're overly focused on work, it's easy to neglect your physical health." See <https://www.helpguide.org/articles/stress/stress-at-work.htm>. "But when you're supporting your health with good nutrition and exercise, you're stronger and more resilient to stress." Here are some tips to getting in that physical activity we all need.

- Schedule in aerobic exercise that raises your heart rate. This will "lift your mood, increase energy, sharpen focus, and relax both the mind and body."
- Find an aerobic exercise that brings you joy. Mark it on your calendar between your meetings, hearings and client visits. Scheduling exercise on your calendar increases your likelihood of following through.
- Rhythmic movement like walking or running is soothing for the nervous system. Feeling stressed? Go for a walk. Put on a timer to remind you to get up and step away from your work. If possible, get outside to increase the benefits.
- To cope with stress, it is recommended that you get 30 minutes of physical activity a day. "If it's easier to fit into your schedule, break up the activity into two or three shorter segments."

Reminders from the CAFL Administrative Office

CAFL attorneys in good standing may accept new CAFL appointments, even if they've already billed CPCS 1,350 hours (as long as the attorney has not billed more than 1,800 hours). In short, the statutory limitation on accepting new cases after billing 1,350 hours does NOT apply to CAFL cases at both the trial and appellate level. This applies to all CAFL cases, including CRA's.

Second, CAFL attorneys can bill up to 1,800 hours this fiscal year (rather than 1,650 as provided by statute) **as long as at least 150 of those hours are for work done on CAFL cases assigned on or after December 1, 2016.**

The additional 150 hours do not apply to work on cases assigned before December 1, 2016 and only applies to the current fiscal year (2017). Ebill will automatically tabulate the hours and accept assignments in keeping with the above. If you have any questions please email the Audit and Oversight Department at attyhours@publiccounsel.net.

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It's getting to be spring, the time of year when heads turn to flowers, Red Sox, and ...CAFL CLEs. As you know, you must complete eight hours of CAFL-certified CLEs by June 30, 2017 and submit proof to Rita Caso (rcaso@publiccounsel.net) by July 15, 2017. If you're not sure how many you've submitted, please feel free to **email** Rita; she cannot respond over the phone to these inquiries.

In the News

On March 30, WCVB-Channel 5 reported that DCF is facing a significant backlog in completing CORI checks on prospective foster homes, resulting in a delay in many children being placed in family foster care. More expansive CORI check policies went into effect after two high profile cases involving the death of children under DCF's supervision. According to information obtained by WCVB, at the time of this report, there were over 16,000 background checks waiting to be completed. To read the article, go to <http://www.wcvb.com/article/dcf-faces-huge-backlog-on-background-checks/9210895>.

In an interview with Wolf Blitzer of CNN, John Kelly, Secretary of Homeland Security discussed the possibility of separating undocumented children from their parents at the southern border of the United States and putting them into foster care or connecting them with relatives, while their parents are held in detention centers. Click here: <http://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html>

In February, the Boston Herald reported on the recently released Annual Report of the Office of the Child Advocate. According to the OCA Report, between July 2015 and June 2016 there were 35 fatalities of children under the care or custody of the Department of Children and Families. Click here: <http://www.mass.gov/childadvocate/docs/office-of-the-child-advocate-annual-report-fy16.pdf>

In a February editorial, the Boston Globe observed that although there have been improvements in the Department of Children and Families following the death of Bella Bond, significant changes continue to be necessary. Click here: <http://www.bostonglobe.com/opinion/editorials/2017/02/28/the-bella-bond-story-not-over/7hZNOTTAwISV6fPHWDhIMP/story.html>

Child Welfare Resources

Judicial Resource Guidelines:

In March, the National Council of Juvenile and Family Court Judges published the “Enhanced Resource Guidelines” for judges and other stakeholders in child welfare courts. These guidelines are an update to the 1995 “resource guidelines” and the 2000 “adoption & permanency guidelines.” This combined publication reflects changes to federal law, most prominently the Fostering Connections to Success and Increasing Adoptions Act of 2008. While the judicial guidelines are geared primarily for judges, they provide a tool that we can use to give judges information that they need to make informed decisions. For example, the guidelines direct how the court and DCF should conduct kinship and relative searches and suggest ways of finding missing clients. The guidelines address topics important to our practice including implicit bias, reasonable efforts, due process, engaging families and children, among others. The guidelines also recommend questions judges should be asking on each case regarding family time, appropriate placements, and the child’s wellbeing. The Guidelines can be found here: <https://www.ncjfcj.org/ncjfcj-releases-enhanced-resource-guidelines>.

State Without Stigma:

Every day, about four people in Massachusetts die from the state’s opioid epidemic. Governor Baker’s opioid addiction workgroup has produced a video and other resources as part of its “State without Stigma” initiative. The purpose of the initiative is to reframe addiction as a medical disease. According to EOHHS Secretary MaryLou Sudders; “A primary reason why individuals do not seek treatment is the stigma associated with addictions.” “When we define someone with words such as ‘addict’ and ‘junkie,’ it dehumanizes the person and creates a powerful obstacle to seek treatment or to ask for help.” Reframing the way others view people suffering from substance use disorder is important in our advocacy. Even something as simple as changing our language can impact the way DCF and the court view our clients. For example, we can say “substance use disorder” instead of “substance abuse” in our motions, hearings, and discussions about our clients. And we can educate others too. As emphasized on the home page of State without Stigma, “Addiction is not a choice. It’s a chronic disease similar to diabetes, heart disease and arthritis.” For more information, click here: <http://www.mass.gov/eohhs/gov/departments/dph/stop-addiction/state-without-stigma/>.

Immigration Resources:

Thank you, Wendy S. Wayne Director, CPCS Immigration Impact Unit, for highlighting the following resources for our clients who may be at risk of deportation.

- The *Immigrant Legal Resource Center (ILRC)* has resources we can share with our clients: <https://www.ilrc.org/know-your-rights-and-what-immigrant-families-should-do-now> (information for immigrant clients on their rights);
- ILRC also has on its website information on creating a family preparedness plan if, for example, parents are deported and children remain in the US. They also have “know your rights” red cards available for distribution. <https://www.ilrc.org/community-resources>.
- The *Immigrant Defense Project (IDP)*, has prepared a flyer translated into 15 languages describing your rights if ICE comes to your home or stops you on the street. <https://www.immdefense.org/ice-home-and-community-arrests/>.
- IDP also has on its website detailed information and sample forms to plan for financial needs and designation of a temporary caretaker for your children: <https://www.immdefense.org/emergency-preparedness/>.

Legal Updates

New DCF Family Assessment and Action Planning Policy, DCF Policy 2017-01

DCF recently released its new Family Assessment and Action Planning Policy, effective February 6, 2017. The new policy emphasizes DCF's commitment to work with families in "a manner that is trauma informed, culturally competent and strength based." It details the Department's family assessment protocols and the requirements for Action Plans (formerly known as Service Plans). The process should result in the family and DCF having a shared understanding of what changes need to occur over what time period. For example, the plan should not only specify the "observable changes" that are needed to achieve the goals of the plan, but should also identify the actions/tasks/services/supports necessary to address these changes. The policy requires sibling visitation schedules, and a plan for visits with parents, grandparents and other kin, which include other forms of contact such as telephone calls and letters. "Supported" or "Substantiated Concern" findings are reviewable and may be changed during the course of the Family Assessment. The policy is available on the CAFL website here: <https://www.publiccounsel.net/cafl/professional/triallitigation-practice-tools-and-resources>. We hope to provide a more detailed summary of the new policy very soon.

Recent Case Law

Adoption of Yadira, 476 Mass. 491 (2017). The SJC held that federal regulations allow DCF to petition for termination of parental rights on behalf of unaccompanied refugee minors whose parents are also present in the U.S. The SJC affirmed the interlocutory order denying the mother's motion to dismiss DCF's termination petition. For a complete summary of the decision see: <https://www.publiccounsel.net/cafl/wp-content/uploads/sites/7/2014/10/Adoption-of-Yadira-Feb-14-2017.docx> The full opinion can be found here: [http://www.socialaw.com/services/slip-opinions/slip-opinion-details/adoption-of-yadira-\(and-two-companion-cases\)-1](http://www.socialaw.com/services/slip-opinions/slip-opinion-details/adoption-of-yadira-(and-two-companion-cases)-1).

Adoption of Uday, 91 Mass.App.Ct. 51 (2017). The Appeals Court held that DCF complied with the notice requirements of the Indian Child Welfare Act (ICWA) after DCF filed a supplemental record appendix, which included letters from three federally recognized tribes declaring that the child was not an "Indian child" as defined by the statute. The Court noted that the new ICWA regulations that went into effect on December 12, 2016, require DCF to file with the trial court proof of notice, including any return receipts or other proof of service. The Appeals Court also reminded us that claims challenging DCF's use of reasonable efforts must be raised in a timely manner prior to trial. For a complete summary of the decision see: <https://www.publiccounsel.net/cafl/wp-content/uploads/sites/7/2014/10/Adoption-of-Uday-Feb-16-2017.docx>. The full opinion can be found here: <http://www.socialaw.com/services/slip-opinions/slip-opinion-details/adoption-of-uday-1>

Fazio v. Fazio, 91 Mass. App. Ct. 82 (2017). The Appeals Court upheld a trial judge's denial of a father's Motion to Stay a divorce action proceeding under the Servicemembers Civil Relief Act (SCRA). The SCRA provides that a person in military service is entitled to a stay in any child custody proceeding if that military service prevents them from appearing in court. The Court held that the requested stay did not comply with the requirements set forth under the SCRA and therefore, the Fazio court found no error. More information on the requirements of a stay pursuant to the SCRA and a full case summary are available here: <https://www.publiccounsel.net/cafl/wp-content/uploads/sites/7/2014/10/Fazio-v.-Fazio-Feb-24-2017.docx>. The full opinion can be found here: <http://www.socialaw.com/services/slip-opinions/slip-opinion-details/johanne-fazio-vs.-keith-fazio>

Legal Updates (cont.)

Commonwealth v. Dragotta, 476 Mass. 680 (2017). After her infant daughter was injured while in the care of her partner, Heather Dragotta was convicted of wantonly or recklessly permitting another person to commit an assault and battery that resulted in bodily injury. The conviction was affirmed by the Appeals Court, but reversed by the SJC. At issue was “whether Dragotta either knew or reasonably should have known that [her partner] was so manifestly unfit to care for an infant that the victim was in grave danger if she were left in his sole care even briefly.” A review of the evidence presented at trial left the Court finding it difficult to imagine what more a reasonable person in Ms. Dragotta’s position should have done. The Court found that Ms. Dragotta’s actions were an “error in judgment” but did not involve the “high degree of likelihood that substantial harm would result,” necessary to uphold the conviction. This case may be helpful to attorneys representing parents alleged to have neglected their child by allowing them to be cared for by a person suspected of causing physical or sexual abuse. The full opinion can be found here: <http://www.sociallaw.com/services/slip-opinions/slip-opinion-details/commonwealth-vs.-heather-dragotta>

In the Matter of N.L., 476 Mass. 632 (2017). This case addresses the right to prepare for a hearing. The SJC was asked to decide whether a judge may deny a person’s (or their counsel’s) first request for a continuance of a civil commitment hearing pursuant to G.L. c. 123, § 7(c) or a medical treatment hearing pursuant to G.L. c. 123, § 8B. The SJC, relying upon the language of the relevant statute, held that “the grant of the continuance is mandatory where a denial thereof is reasonably likely to prejudice a person’s ability to prepare a meaningful defense.” While this case relies mostly on statutory construction, it’s really about due process; the great “meaningful defense” language applies across practice areas. It may be cited when asking for a continuance to prepare for a 72-hour hearing, or when seeking discovery from DCF prior to the hearing. The full opinion can be found here: <http://www.sociallaw.com/services/slip-opinions/slip-opinion-details/in-the-matter-of-n.l>

Spotlight: Service of the Month

Each month, the editors of the CAFL newsletter will be highlighting a service that we hope will be useful in our cases. If you know of a new, interesting or effective service that could be highlighted in the newsletter, please contact CAFL Staff Attorney, Rachel Botelho at rbotelho@publiccounsel.net.

When the Children Requiring Assistance (CRA) law was created in 2012, the legislature mandated creation, within three years, of a statewide network of family resource centers. Today, the Massachusetts Family Resource Centers (“Centers”) are a hidden gem for our clients of all ages and responsibilities. Family Resource Centers are located in every county. Each Center offers individual programs and services, but the Center’s main goal is to “support families to strengthen their bonds, connect to others, and engage in their community.” To promote this goal, each Center can provide families information regarding employment, child care, parenting classes, parenting support groups, educational advocacy, budgeting, housing, medical services, mental health services, and substance use disorder services in your area. Some family resource centers even offer a space for parent-child visitation.

Centers also have school liaisons to help assist families in navigating the educational system; clinicians to help families identify their needs and develop a family support plan or refer individuals to outside services; family Support Workers to provide information or referrals for programs or services; and parenting classes and supports to help parents understand their and/or their child’s specific needs.

For more information regarding this invaluable support, you can contact the Family Resource Center in your county. A list of the 18 locations and their contact information can be found at <http://www.frma.org/locations>. Follow the links to each locations specific website.

Legal Practice Tip: Advocating for a Pre-Trial Dismissal

Judges often tell us that they are powerless to dismiss a care and protection petition over DCF's objection without having a hearing on the merits (or trial). This month's practice tip is about how to seek a dismissal before trial over the objection of DCF.

You may file a motion to dismiss in a number of situations. Most often this comes into play when DCF would not be able to meet its burden of proof (clear and convincing evidence of current parental unfitness) at a trial, based on the undisputed facts as they exist at the time that you are requesting the dismissal. You may also file a motion to dismiss if the case should be heard in another state because Massachusetts does not have jurisdiction under the Massachusetts Child Custody Jurisdiction Act ("MCCJA"). A third basis for moving to dismiss is when the juvenile court lacks subject matter jurisdiction because DCF's allegations in the petition do not meet the requirements of G.L. c. 119, § 24. See Care and Protection of Lillian, 445 Mass. 333, 336-37 (2005) (lack of subject matter jurisdiction is not waivable and may be raised at any time).

The CAFL Appeals Unit has developed one expansive model motion that outlines several scenarios that authorize a judge to dismiss the petition over DCF's objection prior to trial. The motion can be filed on behalf of a parent who has become able to care for their child or a child who wants to be reunified with his or her able parent. It should also be filed where a parent and child have already been reunified, but DCF is refusing to dismiss the case.

The first argument is rooted in the litigant's Fourteenth Amendment right to be heard meaningfully on a motion to dismiss where the petition is no longer necessary. The second argument is statutory and states that § 24 emphasizes that a child must not be separated from his parent unless it is necessary for his protection from immediate risk of serious harm. The motion emphasizes that the court has equitable authority to act in the child's best interests and inherent authority to function as a decision-making body. If it were true that the court could not dismiss without DCF's consent, then DCF would be usurping the court's inherent authority. The motion then details the principles of judicial economy and public policy that require the court to be able to dismiss a petition before a trial. To close, the model motion uses G.L. c. 123A – the statute that governs the commitment of sexually dangerous persons – for purposes of comparison. In Commonwealth v. Dube, the Appeals Court said that a trial court acting under a c. 123A petition has authority to dismiss the petition before a hearing on the merits, even though authority to do so is not explicit in the statute. 59 Mass. App. Ct. 476, 487-488 (2003).

As always, be client directed and consult with your client about whether to file a Motion to Dismiss the case. If you represent a parent and the child in the case wants to go home, talk to the child's attorney about filing the motion jointly – it might increase your chances of success. If you represent a parent, talk to your client about things like housing and a child care plan, to determine whether he or she is ready to assume custody of their child successfully. Advise your client that even if the court returns custody of the child, DCF will likely keep the family's clinical case open and will still be a part of the family's life for a period of time. DCF's level and duration of involvement with a family after custody has been returned to a parent varies from case to case and in different parts of the state.

To obtain a copy of the CAFL Appeal's Unit model motion to dismiss a care and protection, please contact your area resource attorney.

Monthly Book Review

White Oleander, by Janet Finch (1999)

White Oleander is a wonderfully written, haunting novel, about 12 year-old Astrid. Astrid is placed in the California foster care system after her mother—a troubled poet—is convicted of murdering her boyfriend. This launches Astrid into a series of foster homes.

Astrid begins the story fragile and vulnerable to the decisions of a system not equipped to care for her but hardens to the reality of being in foster care. Astrid adapts her personality to the circumstances of each home in which she is placed. But, somehow, she learns that she holds strength—strength that is deeply rooted and that she owes in part to her mother.

This novel is written in such a personal way that Astrid's story lingers with you far after you turn the last page. Professionals working in the child welfare system will recognize some of the story's descriptions of foster parents struggling with their own sobriety, or who limit the food foster children are allowed to eat, or descriptions of seemingly stable foster homes that disrupt due to reasons that have nothing to do with the child. What this novel does so effectively is take you on the journey with Astrid, home to home, through the foster care system. Intertwined are Astrid's feelings towards her mother, whom she feels betrayed her by setting the events in motion that put her in foster care. Astrid is finally placed at a group home setting, which is known as a final resort for foster kids without a placement (Massachusetts's likely equivalent to an independent living facility).

What makes this novel a good-read for a CAFL attorney or social worker is that the writing won't disappoint. The novel is at times intimate and slow paced. It then takes quick turns to other places and themes all together. This seems to reflect the experience of many children who are in foster care. The story of Astrid also serves as a nice reminder that the lives of our children clients are often fraught with confusion, uncertainty, complex feelings and disruption. Developing strong relationships with our child-clients, getting to know them and their experiences, will help them tell us their stories and represent them best.

