

# CAFL NEWS

Volume I, Issue III

May/June 2017

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

With the warmer weather finally here, I want to highlight some exciting things happening in CAFL. First, I want to extend a warm welcome to the new CAFL staff and private panel members—both on the trial and appellate panels—who have recently joined our team. Amy Karp, along with her outstanding unit, has once again succeeded in providing new CAFL practitioners the skills and tools needed to zealously advocate for their clients.

May has been a busy month and it began with the Supreme Judicial Court hearing argument addressing whether the trial court is required to make reasonable efforts findings at the initial custody hearing in a care and protection case and considering the authority of the judge to make specific orders at that stage of the hearing. On May 15<sup>th</sup>, the state House and Senate held hearings on an Act to prohibit discrimination against adults with disabilities in the family and juvenile courts. Also during May, many of you attended and participated in the Juvenile Bar Association Conference as well as the CPCS Annual Conference.

Protecting families against state intervention, while often rewarding, can be difficult and very sad work. Remember what the novelist Celeste Ng said, “Resist the urge to grow a shell. Don’t let fear convince you that hardness is good.” Keep up the good work.

—Nancy Baratta, CAFL Managing Director

“The fundamental liberty interest of natural parents in the care custody, and management of their child is protected by the Fourteenth Amendment, and does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life.”

*Santovsky v. Kramer*, 455 U.S. 745, 754 (1985)



## NATIONAL REUNIFICATION MONTH

June is National Reunification Month! Time to celebrate the hard work of parents and professionals that help them to bring families back together. This month is for you, too, to acknowledge your hard work in defense of families and your efforts to achieve reunification. More resources for parents on bringing children home after foster care can be found here: <https://www.childwelfare.gov/pubs/reunification/>.

## Training Notices

### Immigration Law Basics for the CAFL Attorney

Monday June 19, 2017  
2:00-4:00 P.M.  
Cambridge Juvenile Court  
2 CLE Credits

### Advanced Evidence for the CAFL Lawyer: Discussion, Debate and a Dollop of Rage

Tuesday June 20, 2017  
2:00-4:00 P.M.  
Framingham Juvenile Court  
2 CLE Credits

### Trial Preparation & Presentation Skills

Wednesday June 21, 2017  
9:30 A.M.-4:30 P.M.  
MCLE Boston  
6 CLE Credits

### Sexual Risk Assessments & Treatments: What the CAFL Attorney Needs to Know to Advocate for AND Protect their Juvenile Clients

Thursday June 22, 2017  
1:30-3:30 P.M.  
Somerset Public Library  
2 CLE Credits

### Crimmigration 101

Monday June 26, 2017  
2:00-5:00 P.M.  
MCLE Boston  
3 CLE Credits

### Norfolk & Plymouth Counties Child Welfare Case Law Review

Wednesday, June 28, 2017  
2:00 – 4:00 pm  
Thomas Crane Library (Ground Floor Meeting Room) – Quincy  
2 CLE Credits

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## Training Notices (cont'd.)

### **Legislative History**

Social Law Library, John Adams Courthouse

Thursday, June 29, 2017

10:00 A.M. to 12:00 P.M.

\$25 SLL members and CPCS staff, bar advocates and prosecutors; \$50 all others

2 CLE Credits

### **Handling SSI & SSDI Claims**

Thursday, June 29, 2017

12:00 noon – 5:00 pm

MCLE Boston

5 CLE Credits

### **Fighting for Due Process: Proper Notice, Meaningful Participation, Timely Discovery and MORE**

Thursday, June 29, 2017

2:00 – 4:00 pm

Worcester Law Library (Room 300)

2 CLE Credits

For up to date training information, including how to register and information on more available trainings, please visit the CAFL training website at: <https://www.publiccounsel.net/cafl/training/>

**The deadline to submit certificates of completion for 8 hours of approved CLE credits is June 30, 2017 for the 2017 fiscal year. Please include your BBO number with your certificate. For inquiries about CLE credits or to submit your CLE's, please contact the CAFL certification coordinator Rita Caso at [rcaso@publiccounsel.net](mailto:rcaso@publiccounsel.net).**

### **Administrative Reminder: CAFL Seeking Mentors for Trial Panel**

Earlier this month, 45 new attorneys successfully completed the CAFL trial panel certification training. Those new to the private trial panel have been assigned mentors to help guide them in their practice. Currently, the CAFL trial panel support unit (formerly called the "CAFL administrative office") is looking for new mentors from all across Massachusetts. If you are interested in mentoring, please complete the application posted on [publiccounsel.net](http://publiccounsel.net) under CAFL news or contact our staff attorneys: Alice Turner, 617-910-5743 or Alexandra Roark, 617-910-5741.

## In the News

A recent study conducted by Harvard University researchers demonstrated that there is a lack of services for children in Massachusetts with mental health needs. Researchers attempted to access therapists and doctors to get help for a depressed child. They were able to secure an appointment with a pediatrician only 40% of the time and with a psychiatrist only 17 % of the time. This study was published in the in the *International Journal of Health Services*. In Boston, the average wait time to get an appointment with a primary care doctor or psychiatrist was 15 days and even longer if the child had MassHealth. This study demonstrates the roadblocks parents face on a daily basis seeking help for their children suffering from mental illness in the Commonwealth, especially for parents with limited means.

<https://www.bostonglobe.com/metro/2017/05/09/study-many-parents-need-can-find-mental-health-care-for-their-children/RsRbkIRv6jtd9wJTChObpO/story.html>

As the Boston CBS affiliate has reported, more people in Massachusetts are now dying of drug overdoses than car accidents. The opioid crisis in Massachusetts is affecting all parts of the Commonwealth. This has led to new ways in which law enforcement is approaching the growing epidemic. For example, in Plymouth health care professionals are teaming up with law enforcement to make joint house calls the morning after an overdose in hopes to find people treatment beds. Hospitals are also beginning to use a more collaborative approach that includes providing social workers and mental health treatment providers to patients who have overdosed. For more information of growing trends in collaboration to address the heroin and fentanyl epidemic, see this story at:

<http://boston.cbslocal.com/2016/02/10/i-team-opioid-crisis-plymouth-heroin-overdose-police/>

The House version of the proposed 2018 fiscal year budget, that goes into effect July 1, 2017, will lower the annual clothing allowance that families receiving welfare will get for children under 19 years old. The current proposed budget will reduce the annual clothing allowance from \$250 to \$200. The Senate is looking to restore the clothing allowance to \$250 annually if money can be allocated from other parts of the budget.

[http://www.newsandtribune.com/cnhi\\_network/budget-cuts-in-massachusetts-dig-into-clothes-allowance-for-state/article\\_17cd716f-74c1-57e5-8393-5f0ebae778fe.html](http://www.newsandtribune.com/cnhi_network/budget-cuts-in-massachusetts-dig-into-clothes-allowance-for-state/article_17cd716f-74c1-57e5-8393-5f0ebae778fe.html)

## Announcement: Community Resources

One Can Help (OCH) addresses the impact of poverty on children and families in the juvenile court system, by providing the critical resources they need to succeed. OCH support is now available statewide. For more information, please contact [anne@onecanhelp.org](mailto:anne@onecanhelp.org) or visit [www.onecanhelp.org](http://www.onecanhelp.org).



## Spotlight: Credit Reports for Children In DCF Foster Care



Under federal law (“The Child and Family Services Improvement Act, P.L. 112-34” and “The Preventing Sex Trafficking and Strengthening Families Act, P.L. 113-34”) DCF should be obtaining credit reports for children in DCF custody to discover whether an adult has used their identity to get credit. A change in the federal law in 2014 required DCF to run a credit report for any child 14 years old or older but the 2013 DCF permanency planning policy only calls for these checks for children at least 16 years old. As an attorney for the child, you will likely want to ensure that DCF is getting credit reports for your child client at least when they reach the age of 14. Identity theft can happen to children both before they come into foster care or after they are placed. Reviewing credit reports is important to ensure that kids or young adults are able to find financial stability after they leave the foster care system.

Information about removing debt from a child's credit report based on identity theft is here:  
<https://www.consumer.ftc.gov/articles/0040-child-identity-theft#Check>

To remove debt from the report after identity theft, you can simply attach a Uniform Minor's Status Declaration. Any accounts that were opened up while the child is under 18 should be removed from the credit report. The reasoning is that even if the child had opened an account, a child cannot enter into a contract until they are 18 years old.

## Self Care Tips

**Feeling overwhelmed in your busy law practice? Reach out to professional support services.**

“Hearing the details of traumatic experiences in the presence of the individual who has experienced them and is still reacting to them” can cause a special kind of stress for legal professionals. This “secondary trauma” can have a real impact on the way attorneys approach their cases. Some symptoms of secondary trauma include: intrusive thoughts, fatigue, sadness, anger, detachment, physical ailments, sleep issues or absenteeism.

One resource for attorneys who may be experiencing secondary trauma here in Massachusetts is the organization “Lawyers Concerned for Lawyers.” This group is designed to provide support for lawyers who may be suffering from secondary trauma or any kind of practice related stress. Lawyers Concerned for Lawyers has general support groups as well as specialized support groups for law students or even moms with solo practices. For more information about their programs, call 1-800-525-0210. The Lawyers for Lawyers website also has links to helpful information and self-tests at: <http://www.lclma.org/>. For more specific help, you can submit questions anonymously.

## Legal Updates

### **Guardianship of K.N.**, 476 Mass. 762 (2017)

Keywords: Guardians right to court appointed counsel

In Guardianship of K.N., the SJC considered whether an indigent guardian of a minor, who is the subject of a petition to remove them as the child's guardian under G.L. c. 190B § 5-212, is entitled to court-appointed counsel. The SJC held that a guardian, even one who has established a *de facto* parent relationship with the child, does not have a liberty interest such that they are entitled to the procedural due process right to counsel. The SJC held, however, that the equitable powers of the Probate and Family Court allow a judge to grant a motion requesting the appointment of counsel to an indigent guardian in removal proceedings if the judge finds that doing so would materially assist in determining the best interest of the child and parental fitness. Because the court did not find that there is a right to counsel for guardians in these cases, CPCS has determined it cannot pay attorneys to represent guardians. If you have been appointed to represent a guardian in the Probate and Family Court, contact Trial Panel Director, Carol Rosensweig at [crosensweig@publiccounsel.net](mailto:crosensweig@publiccounsel.net).

<http://www.socialaw.com/services/slip-opinions/slip-opinion-details/guardianship-of-k.n>

### **Adoption of Bianca**, ([Appeals Court Nos. 2016-P-764](#) )

Keywords: Current unfitness; stale evidence; reopening the record

On appeal, Mother argued that lengthy delays in the legal proceedings rendered the facts the court considered in reaching a finding of unfitness stale. But, the Appeals Court overlooked the age of the evidence and instead considered "whether there was sufficient evidence presented at trial that the mother was on an upward trajectory to establish that it would be fundamentally unfair to resolve the case on the current record." Although mother's expert testified at trial that there "was reason to believe that [the mother] could rehabilitate herself in the future," the Appeals Court found that the trial court appropriately relied upon mother's prior history and patterns of relapse when finding her unfit. Furthermore, the Appeals Court decided that the best interests of the child and maintaining her stability weighed against reopening the trial record for more current information. "[A] parent's post-decree improvements cannot be permitted to continually upend an unfitness determination."

### **Commonwealth v. Baldwin**, ([No. SJC-12188](#) )

Keywords: Excited utterance

One issue raised in the SJC Baldwin case stemmed from a 911 call placed by the six year old son of the defendant that included a statement "my dad just choked my mom." The Commonwealth sought to admit the 911 recording as non-testimonial excited utterances. The defendant asserted that the statements were not excited utterances and that their admission would violate his right of confrontation. The trial court excluded the recording on the ground that the boy's voice appeared calm, and therefore the statements were not excited utterances.

## Legal Updates (cont'd)

In its decision, the SJC stated “[i]n addition to demeanor, our cases have identified other factors relevant to the inquiry” as to whether a statement constitutes a spontaneous utterance, “such as whether the declaration is made in the same location as the traumatic event . . . ; the circumstances of the statement, including its temporal proximity to the event . . . ; the young age of a 911 caller . . . ; and the degree of spontaneity demonstrated by the declarant.” “In short, the question is not simply whether the declarant shows any particular form of ‘excitement,’ but rather whether the declarant was acting spontaneously under the influence of the incident at the time the statements were made, and not reflexively.” As the trial judge had not considered these other relevant factors, the trial court ruling was vacated. In care and protection cases, we can use these factors to either challenge the admission of excited utterances or, if we are the proponents of the evidence, to show why the statement are reliable.

<http://www.sociallaw.com/services/slip-opinions/slip-opinion-details/commonwealth-vs.-shawn-a.-baldwin>

### **Legal Practice Tip: Administrative Advocacy & Working with DCF**

There are many times that parents and children will want to challenge a DCF clinical decision. Your client may want more frequent or better visitation. Perhaps your client is seeking permission to attend school meetings or doctors’ appointments and is being told no. Or, there are times when clients disagree with the terms of their action plan or the way in which a social worker is handling their case. While practices vary in different DCF area offices, there are steps lawyers can take to seek relief from DCF before seeking court intervention. Demonstrating that these steps were taken will also show the court that you have attempted to resolve any complaints in a timely way.

- Ask first! Advise your client to initiate a conversation with her DCF social worker to address her concerns or the clinical issue at hand. A client may need support and guidance from you on how to advocate for themselves with their own social worker. Ask your client to write down any important conversations or requests from DCF so that you can refer to those conversations as needed. If your client has any trouble communicating with her social worker due to language issues, disability or conflict with the worker, you may need to step in to facilitate this initial conversation.

You, as the attorney, can send a letter or email directly to the social worker asking for the relief but should also send a copy to DCF counsel. You may state in the letter exactly what the concern is, what specific alternative you are seeking and why. With your client’s permission, you may also speak to people in the community who can provide assistance or support your client’s request. Ask collaterals whether they would be willing to write a letter detailing what they can do to help so that that you could share that with DCF.

### Practice Tip (cont'd)

- Be sure to include any supporting documents in your correspondence with the social worker. This can include letters of support from collaterals in the community, doctor's recommendations, important records or clinical literature. Send a copy of this letter to the unit supervisor, as well.
- Speak with the child's attorney about whether the child supports your request. Having the child on your side, whether in informal advocacy or in the courtroom, can be very helpful.
- Request a clinical meeting at the DCF office to go over your concerns. Having people in the room that can authorize a change—a supervisor or an area program manager—can be helpful in the negotiation. Take notes during the meeting and listen carefully to what the DCF social workers are concerned about and what the impediments may be to getting the relief you seek. Address those concerns and look for a way to get to "yes."
- Connect with the DCF attorney to give him an opportunity to work with the clinical team to "fix the problem" and explain that you will file a motion if the issue cannot be resolved.
- If after your informal efforts to seek a change have failed, you can file a formal grievance with the DCF office. This requires a letter to the social worker, the supervisor and the director of areas. See 110 CMR 10.36-38 for more information on the grievance process. Be sure to provide a caption to the letter that is clear you are initiating the formal grievance process.
- Of course, if the clinical decision is one in which you may be entitled to a fair hearing, you will want to file a request for the fair hearing in writing as soon as you have become aware of the issue. This can include decisions by DCF to suspend, reduce or terminate a service. Or, if DCF violates any of its regulations resulting in prejudice to your client. For more information on how to litigate a fair hearing, you can reference the MCLE Child Welfare Practice Manual (chapter 6). Merely filing a request for a fair hearing can sometimes lead to clinical meetings to resolve the dispute.
- You and/or your client can reach out to the DCF's Office of the Ombudsman to help resolve any issues that arise from poor communication between the social workers and the client. The Office of the Ombudsman is located in the DCF Central Office and they field complaints by consumers working with the agency. Their goal is to mediate and resolve any issues. To contact the DCF Office of the Ombudsman, call (617) 748-2444.

If these efforts to work with DCF have failed, you can and should put all of your informal advocacy efforts into the affidavit of counsel that you file with any court motion. It shows that you are not wasting the Court's time with an unnecessary motion and as such, that the Court should take your motion seriously. You can also use any documentation that you receive from the family member, daycare, provider, or collaterals to attach to your motion. And who knows? Maybe your client will get the relief she is seeking without having to file a motion and improve her relationship with her social worker in the process.



## **Social Worker FAQ:**

### **Do you have any tips for talking to children about difficult subjects?**

One of the most difficult aspects of being a CAFL attorney is connecting with child clients in order to gain their trust. When you are first assigned, you are often one of a list of many strangers introduced into the child's life, making it difficult to set yourself apart as the child's legal confidant. The child is often scared, and depending on the child's age, may be confused about what has happened. Here are five suggestions from experienced social workers to ease difficult conversations with children:

#### **Bring age appropriate activities.**

Children are much more responsive when there is the buffer of an activity. Examples of some easily accessible activities include coloring, drawing, using play dough, or going to the playground. Children also tend to find it easier to express their feelings through drawing a picture than talking directly. Having markers and paper available will allow the children to express their feelings through an easier mode of communication, and allow you to better represent the client.

#### **Ask open-ended questions.**

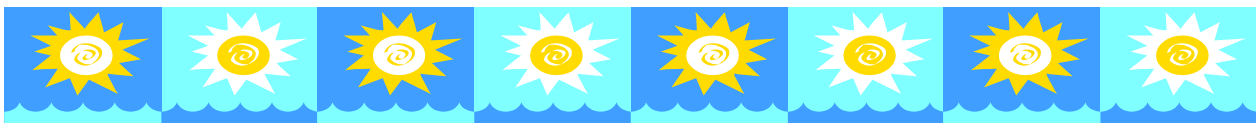
Speaking to a child is difficult, and it is even more difficult when a child is shy, scared, and/or confused. It is easy to ask the child "Do you want to live with your mom?" However, in that scenario you are essentially giving the child the answer. It is important that you do not influence the child through your questions. Therefore, a better question would be "What do you want me to tell the judge about where you want to live" or "What else do you want the judge to know?"

#### **Be open to any and all answers.**

Don't create a presumption about that your client wants—even one based on what they have told DCF. Children often meet with DCF under circumstances that cloud their position. It is important to really listen to the child.

#### **Give children a chance to be positive about their parents or primary caretakers.**

Your relationship with a child client begins because the parents have allegedly done something wrong, and the DCF affidavit is full of negative information regarding the parents with little or no positive information. CAFL attorneys, on the other hand, want additional information to support our clients' position. Similar to the way we identify a parent clients' strengths to support their case, it is helpful to ask our child clients "What makes your mom a good mom" or "What makes your dad a good dad".



## Social Worker FAQ (cont'd)

### Ask questions more than once.

CAFL attorneys first meet children under extremely stressful circumstances. As you begin to establish a rapport with the child clients, they may be more willing to share information. After establishing a connection with the child, check back to see if the child is willing to share more information. Additionally, the child's position may change over time, and is important to check back with the child to ensure that you are advocating the child's current position. For more information about talking to children clients about difficult topics, please see the following resources:

ABA Video and Written Materials "Interviewing Children" and ABA article "Counseling Children and Youth in Times of Crisis. Both available at <https://www.americanbar.org/publications/litigation-committees/childrens-rights/multimedia.html>.

"Attorneys for Children Guide to Interviewing Clients: Integrating Trauma Informed Care and Solution Focused Strategies (New York State Court Improvement Program). Available at <https://www.nycourts.gov/ip/cwqip/Publications/attorneyGuide.pdf>.

Ann G. Walker, Handbook on Questioning Children: A Linguistic Perspective. Available for purchase at <https://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=213559>

### Practice Advisory: What is a substantiated concern?

In the CAFL trial support unit, we often get the questions: How can I explain to my client when the response to a 51A report is a "substantiated concern?" and What does a "substantiated concern" in response to a 51A report?

The "substantiated concern" outcome is the Department's differential response required by federal law. It means that DCF has found there is reasonable cause to believe that the child was neglected and that the actions or inactions of the parent or caregiver create potential for neglect, but there is no immediate danger to child's safety or well-being. This outcome is only available when the allegations are of **neglect** (not abuse). It indicates that DCF intervention is needed to safeguard the child's safety and/or well-being. Therefore, if the family has an open case with DCF, the current caseworker should update the services or intervention. If the family does not have an open case, one will open.

Importantly, this outcome does not lead to a named individual listed on the Central Registry or the Registry of Alleged Perpetrators. This finding can be contested through the grievance process; it is not subject to the Fair Hearing Process. For recordkeeping purposes, it is no different than an "unsupport" determination. This finding is not available to prospective employers; a response to an inquiry from a prospective employer outside of DCF, would be, "no record found."

It is also important to note that a substantiated concern, unlike a decision to support an allegation, cannot be challenged through a fair hearing.