CAFL News

Volume II, Issue I January 2018

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

With 2017 coming to an end, we wanted to acknowledge the hard work that you all have done on behalf of children and families around the Commonwealth. This has been an exciting year in the world of child welfare law. Your daily efforts on cases in the trial and appellate courts help our clients navigate extremely difficult times in their lives. The work that you all do to advance the preservation of families has a dramatic impact on the lives of parents and children. At the close of another year, we gratefully pause to wish you a warm and happy holiday season.
—From all of us at the CAFL Training Unit

CAFL IS NOW ACCEPTING APPLICATIONS FOR THE APPELLATE PANEL

The Committee for Public Counsel Services is accepting applications for the Children and Family Law ("CAFL") Appellate Panel Certification Training. Admission to the training is by application only. All admitted applicants must attend the three-day CAFL appellate training program on **May 1, 2, and 3, 2018 in Worcester**. Completed Applications must be submitted by **March 23, 2018**. The application can be found at the following link: CAFL Appellate Panel Application – May 2018.

LAWYERS URGENTLY NEEDED FOR HAMPDEN COUNTY CARE AND PROTECTION CASES

Hampden County Juvenile Court is currently experiencing a serious attorney shortage and is in need of lawyers to represent parents and children in Care and Protection cases. If you are currently certified to accept Care and Protection appointments, and are available to accept any cases in Springfield, please contact the CAFL Trial Panel Director, Carol Rosensweig, at: crosensweig@publiccounsel.net or 617-910-5744. CAFL will reimburse you for the time that is spent traveling to and from court. Free access to office space, including conference areas, copying and wifi, may also be available.

Also, if you know of colleagues who are interested in applying for the CAFL trial panel, applications are now being accepted for the Spring 2018 training. Priority will be given to applicants practicing in areas of greatest need for additional attorneys. The application can be found here: CAFL Trial Panel Training Application Spring 2018.

"Challenging the status quo takes commitment, courage, imagination, and, above all, dedication to learning." -Marshall Ganz, Kennedy School of Government, Harvard University

Evidentiary Tip of the Month
De Bene Rulings: What They Are and How They Work

It is not uncommon for judges to take evidence *de bene* when responding to an objection. But what exactly does that mean? When a judge admits evidence *de bene*, the evidence has been admitted on the presumption that counsel seeking to admit it will later lay the proper foundation. *De bene* rulings are a conditional admission of the evidence. *See Harris-Lewis v. Mudge*, 60 Mass. App . Ct. 480, 485 n.4 (2004); *Commonwealth v. Perry*, 432 Mass. 214, 234-235 (2000). For example, a judge may admit *de bene* seemingly irrelevant testimony based on the promise that its relevance will become clear after another witness testifies.

But beware: If counsel opposing the evidence does not renew her objection by the close of evidence, or if the judge makes no further rulings on it, the evidence is admitted. *See Commonwealth v. Salyer*, 84 Mass. App. Ct. 346, 355 (2013) ("Evidence admitted *de bene* remains in the case and is available to the jury for its full probative value unless opposing counsel moves to strike it from the record") (citing *Commonwealth v. Sheppard*, 313 Mass. 590, 595-596 (1943)). If the missing foundational evidence is not subsequently produced, the court has no duty to *sua sponte* strike the evidence admitted *de bene*. See *Muldoon v. West End Chevrolet, Inc.,* 338 Mass. 91, 98 (1958); *Commonwealth v. Navarro*, 39 Mass. App. Ct. 161, 166 (1995).

What is the take-away? Make careful note of all *de bene* rulings. As the evidentiary hearing proceeds, determine if the missing foundational testimony or documents were properly presented. If not, renew your motion to strike the evidence admitted *de bene*. If you forget to renew your objection, the evidence is in.

Anecdotally, we know that sometimes judges take evidence *de bene* for the wrong reasons. They aren't sure how to rule on an objection, and admitting it *de bene* buys them time to think about it. Moreover, if the objecting party fails to renew her objection at the end of trial, they never need to rule on it. But the judge's reasons for admitting evidence *de bene* are, ultimately, irrelevant. In all cases, by the close of evidence, you must object, remind the court that the party proffering the evidence has not laid and cannot lay a proper foundation for it, and move to strike it.

INSIDE THIS ISSUE:

Announcements & Upcoming Trainings Dates

Billing Announcement

CPCS regularly tracks billing by all private attorneys and non-attorney vendors, and provides frequent updates to the Governor's Office of Administration and Finance and the House and Senate Ways and Means Committee about the sufficiency of funds on hand to pay outstanding bills. Although CPCS cannot know in advance what legal or other services will be deemed necessary by assigned counsel in individual cases, CPCS can and does look to billing trends in order to forecast expenditures.

Based on our forecasting, attorneys accepting case assignments through CPCS should expect that that the agency's current FY 2018 General Appropriation funding will support payment of legal service bills through February 2018, and possibly well into March 2018. Vendors of non-legal services payable as Indigent Court Costs should expect that current funding will support bill payments through March 2018, and possibly through April into early May 2018.

In anticipation of possible funding shortfalls for CPCS and a number of other related agencies, the legislature proposed an additional funding account to be administered by the Governor's Office of Administration and Finance. This (Reserve) account was enacted into law and is available for CPCS for further funding to cover a portion of our anticipated shortfall. We have already begun to communicate with the Governor's Office of Administration and Finance so that we may receive these additional funds prior to exhausting our existing Legislative appropriation. As we receive adjustments to our funding thru this Reserve funding or receive additional information to make these forecasts more precise, we will provide all assigned counsel and CPCS vendors with further information.

SAVE THE DATES

January 9, 2018
CAFL Webinar Series
Care and Protection of Walt
Reasonable Efforts and Judicial Authority
1:00-2:30 PM
A detailed training notice with registration information will be distributed privately to panel attorneys and staff in the first week of January

March 15, 2018
Opioid Addiction and Child Welfare Cases
UMass Medical Center, Worcester, MA
Registration information will be emailed to staff and private attorneys some time in January.

April 5 & 6, 2018
Massachusetts Juvenile Bar Association Annual Conference
Sturbridge Host Hotel & Conference Center
For more information visit massjba.org.

May 15, 2018
CPCS Annual Conference
DCU Center Worcester, MA 01608
Registration information will be sent to staff and private attorneys

CAFL APPELLATE TRAININGS

January 24, 2018, 2:00-4:00 p.m.
CPCS Administrative Office
44 Bromfield Street, Boston

February 7, 2018, 2:00-4:00 p.m.
Peabody Institute Library
82 Main Street, Peabody

This training is open to CAFL *appellate* attorneys only.

Approved for 2 hours of CLE credit for the CPCS Children & Family Law Appellate Panel

Please contact Katrina Rusteika at krusteika@publiccounsel.net with any questions.

Legal Updates

Care and Protection of Walt, 478 Mass. 212 (2017)
Keywords: Reasonable efforts, 72-hour hearing, equitable authority

In this unanimous decision authored by Chief Justice Gants, the Supreme Judicial Court took a significant step toward ensuring that the "foster care is a last resort" policy enshrined in state law for more than six decades will be honored by DCF and the courts. The Court affirmed that

- DCF is obligated to make reasonable efforts to avoid removal and to reunify families after children are removed.
- The Juvenile Court must enforce the reasonable efforts requirements.
- The Juvenile Court has broad powers to order DCF to provide services when it has not made reasonable efforts.
- Infrequent parent-child visits, or "parenting time," endanger the parent-child attachment that is "essential" to reunification.
- DCF should explore short-term options (such as having a child live temporarily with a relative) as an alternative to taking custody of a child.

Click here for a full summary of Walt and other recent cases.

Care and Protection of Vieri,
92 Mass. App. Ct. 402 (2017)

Keywords: Adverse inference, unsanitary home

The Appeals Court held that it is permissible for a trial court judge to draw an adverse inference about the condition of a parent's home when the parent refuses to allow DCF access to that home. In Vieri, evidence at trial showed that the home had been in "deplorable" condition. The mother testified that the condition of the home had improved but refused DCF access to the home. The Appeals Court found that the trial judge was not required to credit the mother's testimony about the condition of the home.

The summary can be found here: https://www.publiccounsel.net/cafl/wp-content/uploads/sites/7/2014/10/Care-and-Protection-of-Vieri-Oct-18-2017.docx

The full opinion can be found here: http://masscases.com/cases/app/92/92massappct402.html

Legal Updates (cont.)

Adoption of Talik, 92 Mass. App. Ct. 367 (2017)
Keywords: Adverse inference, absent client

In Talik, the Appeals Court held that a trial judge may draw an adverse inference from a parent's absence from a care and protection or termination proceeding. "Where a parent has notice of a proceeding to determine [their] parental rights and the parent does not attend or provide an explanation for not attending, the absence may suggest that the parent has abandoned [their] right in the child or cannot meet the child's best interest." It is important to note, however, that the adverse inference is not sufficient, by itself, to meet DCF's burden of proof.

The summary can be found here: https://www.publiccounsel.net/cafl/wp-content/uploads/sites/7/2014/10/Adoption-of-Talik-Oct-4-2017.docx

The full opinion can be found here: http://masscases.com/cases/app/92/92massappct367.html

For more information on adverse inferences, please see the Legal Practice Tip included in this newsletter by CAFL Appeals Unit Attorney, Abigal Salois. (page 8)

Commonwealth v. Dobson, 92 Mass. App. Ct. 355 (2017)
Keywords: Parental discipline, child abuse

In Dobson, the Appeals Court reviewed the defendant's conviction for assault and battery by means of a dangerous weapon. The Commonwealth claimed the defendant hit her five year old son in the face with a belt for misbehaving at school. The mother claimed her actions were protected under the parental discipline privilege. Relying on Commonwealth v. Dorvil, 472 Mass. 1 (2015), the Appeals Court rejected her claim and affirmed the conviction. In Dorvil, the Supreme Judicial Court recognized the parental discipline privilege as an affirmative defense. Pursuant to the privilege, "[A] parent or guardian may not be subjected to criminal liability for the use of force against a minor child under the care and supervision of the parent or guardian, provided that:

(1) the force used against the minor child is reasonable;
(2) the force is reasonably related to the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of the minor's misconduct; and
(3) the force used neither causes, nor creates a substantial risk of causing, physical harm (beyond fleeting pain or minor, transient marks), gross degradation, or severe mental distress." Id. at 12.

The Dobson Court held the evidence was sufficient for the trial judge to find that the mother intended to strike the child on the face with a leather belt even though the mother testified that she had intended for the strike to land on his buttocks. The Appeals Court held that it was unreasonable for the mother to strike the child in this way and as such the first prong of the parental discipline privilege was negated.

Move Over, Jeremy and Isaac: A Comment on C&P of Walt

-Ann Balmelli-O'Connor

Our view that the holdings of *Care and Protection of Jeremy*, 319 Mass. 616 (1995) and *Care and Protection of Isaac,* 419 Mass. 602 (1995) are limited to decisions about residential placements got a significant boost from the SJC in *Care and Protection of Walt*, 478 Mass. 212 (2017).

In *Walt*, Father argued that a single justice properly ordered DCF to provide Walt and his father visits four days each week, permit Walt's father to attend special education meetings, and assist the father in obtaining safe housing for the family. We argued on his behalf that those orders were proper under G.L. c. 119, § 29C, or because a court can order DCF to comply with its legal obligations (the *McKnight* and *Sheriff of Suffolk County* arguments). See *Matter of McKnight,* 406 Mass. 787 (1990); *Attorney General v. Sheriff of Suffolk County*, 394 Mass. 624 (1985). DCF argued that *Jeremy* and *Isaac* prohibited the issuance of the orders, and that case law had expanded the holdings of those cases to orders for visits and services. In our reply brief, Father showed that none of the cases DCF cited support DCF's claims. We argued that there was no need for the SJC to rule on a court's authority to make orders for visits and services in other than the no-reasonable-efforts-context.

The SJC held that a single justice and a juvenile court judge have equitable authority to enter orders to remedy the harm DCF causes when it fails to make reasonable efforts to prevent or eliminate the need to remove a child from his parents. And because the SJC upheld orders that were designed to "ensure that the department fulfilled its duty to make it possible for the child to return safely to his father or to attempt to hasten the time when that reunification would become practicable" (*Walt* at 229), the SJC implicitly determined that a court has that same authority where DCF fails to make reasonable efforts towards reunification. And the SJC was not done. After explaining that "decisions related to the normal incidents of custody generally are committed to DCF's discretion," the SJC expressly declined to "determine the full scope of judicial authority to issue injunctive orders [i.e., equitable relief] where the department has been awarded temporary custody of a child, or the limitations on that authority." *Walt* at 230-231 (emphasis supplied).

The SJC now has rejected DCF's claim that the holdings of *Jeremy* and *Isaac* prohibit courts from ordering DCF to take any action that implicates one of the "incidents of custody" set out in G.L. c. 119, § 21 (place of abode, medical care, education, visits, etc.). And the SJC explained the importance of frequent parenting time to the parent-child attachment and reunification, and indicated acceptance of our position that G.L. c. 119, § 35 authorizes a court to enter orders for visits to protect the parent-child relationship. *Walt* at 229-230.

The holdings of *Walt* are pretty amazing in their own right. But the dicta regarding the breadth of a trial court's equitable authority to act when DCF does not meet its legal obligations may be the decision's greatest legacy.

If you have any questions about how to use *Walt* in your own cases, reach out to the CAFL resources in your area.

SERVICE OF THE MONTH
A Look at DCF Regulation 110 C.M.R. 7.00 et seq.

Care and Protection of Walt made clear that DCF has an obligation to make reasonable efforts to avoid the removal of a child and to hasten the return of the child home. If DCF failed to make reasonable efforts to avoid the removal of a child, parties can request that the court order specific services at the 72 hour hearing. Under *Walt,* we now know that judges have equitable authority to in fact order DCF to explore or provide services in cases where DCF failed to make reasonable efforts to avoid removal. State law is also clear that DCF has a continuing obligation to provide services to address the issues that led to the removal of a child after the 72 hour hearing. In light of *Walt,* it is important for lawyers to know the services which DCF should make available to fulfill these obligations. DCF regulations are a good place to start in identifying services that social workers should provide.

While DCF is in the process of updating its regulations, the current version of 110 CMR 7.00 sets out specific services that DCF social workers should make available to families. If DCF fails to provide these specific services, then an argument can be made that DCF is not providing reasonable efforts aimed at avoiding removal or reunifying a child home. To view the current DCF regulations, click here: https://www.mass.gov/lists/110-cmr. Attorneys can also cite to MGL c. 18B (2), DCF's enabling statute, which lists services DCF is mandated to provide. In cases where a parent or child has a disability, DCF has additional obligations under the federal Americans with Disabilities Act and Section 504 of the Rehabilitation Act. To learn more about federal law that may impact services on your case where the parent or child has a disability, click here: The Americans with Disabilities Act. DCF also has obligations under Title VI of the Civil Rights Act, which prohibits discrimination based on race, color or national origin, including discrimination against clients who are limited English proficient. To learn more about DCF's obligations under Title VI, click on the federal guidance letter here: Title VI of the Federal Civil Rights Act.

There are seven different types of specific services identified in DCF's regulations. These services include homemaker assistance, family support, babysitting, parent aides, day care, counseling and case management, and emergency shelter. 110 CMR. 7.020 describes homemaker services as services which provide support, assistance, and training to families in the activities of daily functioning. A homemaker service might help a parent with daily tasks, such as budgeting or schedule planning. Family support services, discussed in 110 CMR 7.030, include a broad range of services like "chore services," and social developmental opportunity. Services in this category are designed to "strengthen the family support unit." 110 C.M.R. 7.040 discusses babysitting services, which are available to "provide direct care, protection, and supervision to children during some portion of the day." Babysitting services are defined as separate from day care services.

Despite these services being clearly defined by DCF in its own regulations, many of these services are rarely offered to families and many social workers do not even know that they exist. Nevertheless, DCF is supposed to be providing these services. Attorneys representing parents and children in care and protection cases should request these services in writing. If DCF social workers deny these services, administrative appeals or motions to compel DCF to provide these services may be appropriate. A copy of the DCF regulations can be attached to any motion for services. For more information on challenging DCF's denial of services, contact your local resource attorney or attorney-in-charge.

Legal Practice Tip: what to do if a judge is asked to draw a negative inference against your client

The Massachusetts Appeals Court has issued two decisions recently that discuss a Juvenile Court judge's ability to draw an adverse or negative inference against a parent in a care and protection case. In *Care and Protection of Vieri,* 92 Mass. App. Ct. 402 (2017), the Appeals Court held that a judge may draw a negative inference that a home remains in poor condition from a parent's refusal to give DCF and/or other collaterals access to the home. In *Adoption of Talik,* 92 Mass. App. Ct. 367 (2017), the Appeals Court held that a judge may draw an adverse inference from a parent's absence at trial, just as he or she may draw an adverse inference from a parent's failure to testify. Nevertheless, a judge's ability to draw a negative inference is limited.

Massachusetts case law guides judges in their determination whether to exercise their discretion to draw a negative inference. A judge cannot draw a negative inference unless "a case adverse to the interests of that party is presented, so that failure of the party to testify [or appear, or allow access] would be a fair subject of comment." *Custody of Two Minors,* 396 Mass. 610, 616 (1986). For example, if a parent is asked and refuses to answer questions about her substance use, the judge may infer from her silence that she uses substances *only if* the opposing party provided some affirmative evidence that the substance use in fact took place. Id.; *compare In Re. Samantha C.,* 268 Conn. 614, 636 (2004) (an adverse inference "does not supply proof of any particular fact; rather, it may be used only to weigh facts already in evidence"). Additionally, a judge must consider whether the inference "is fair and reasonable based on all the circumstances and evidence before him." *Singh v. Capuano*, 468 Mass. 328, 334 (2014). A judge's inference must "be based on probabilities, not possibilities," and may not be "the result of 'mere speculation and conjecture.'" *Chapman v. Univ. of Mass. Med. Ctr.,* 417 Mass. 104, 110 (1994).

Where a judge decides to draw a negative inference, the judge must explain what he or she infers. *See Adoption of Stuart,* 39 Mass. App. Ct. 380 (1995) (judge's findings, inferences, and rationale must be clearly set forth and explain the conclusions reached). A judge's failure to clearly explain his or her inference - for example, a finding that "the Court draws a negative inference against Father for his refusal to testify to the details of the restraining order, pursuant to case law" - is problematic because we are left to wonder what it is that the court inferred from the father's silence.

This month's practice tip: Object if the court makes an adverse inference against your client for failing to appear for trial or refusing to allow DCF and/or collaterals access to the home, or invoking her fifth amendment privilege against self-incrimination. Point to any lack of affirmative evidence of the particular allegation in question. Argue that the inference is not fair or reasonable given the circumstances of your case. Present a reason for your client's absence or refusal to allow access, *if* that reason may persuade the judge. If possible, offer evidence to rebut DCF's evidence of the allegation(s) to which the inference relates.

News & Announcements

STATE AUDITOR RELEASES REPORT CRITICAL OF DCF

Massachusetts State Auditor Suzanne Bump recently conducted an audit of the Department of Children and Families. The report cites many deficits in DCF's treatment of children in its care. Among other things, the report details how DCF failed to collaborate with other state agencies and had systemic failures in its data collection. In a recent article, Boston Globe reporters Andrew Estes and Laura Krantz highlighted the audit's findings. "The audit, which covered 2014 and 2015, enumerated 19 serious incidents — including rape, sexual abuse by a DCF-contracted employee, and multiple assaults — that harmed children in foster care and in other state-supervised settings, but which were not reported to prosecutors. Several district attorneys told the auditor's staff they would have performed detailed investigations had DCF alerted them." To read the article, click here: The Boston Globe.

FEDERAL AUDIT SHOWS UNSAFE CONDITIONS IN DCF GROUP FOSTER HOMES

On December 18, 2017, the Federal Department of Health and Human Services issued a report documenting conditions in Massachusetts group homes for foster children. The audit concluded that 27 of the 30 homes inspected failed to comply with health and safety standards. In addition, 18 of the 30 group homes had one or more employees who had not completed the required criminal background checks. To learn more about the federal audit, click here: Office of the Inspector General's Report or The Boston Globe.

FRANKLIN COUNTY TO EXPAND DRUG COURT TO JUVENILE COURT

Franklin County Probate and Family Court has received a federal grant that will allow it to expand its drug court to families involved in care and protection cases in the Juvenile Court. The expanded Family Drug Court will have a part-time nurse, case managers, recovery coaches and family social workers. Judges and area service providers hope that the new drug court model will help to better serve families dealing with opioid addiction. http://www.recorder.com/Family-Drug-Court-to-receive-$2-1-million-from-state-to-address-opioid-crisis-12574592

CHIEF JUSTICE GANTS DECLARES ATTORNEY SHORTAGE IN SPRINGFIELD JUVENILE COURT A "CONSTITUTIONAL EMERGENCY"

In other news, the Chief Justice of the SJC acknowledged the shortage of available attorneys in care and protection cases—especially in Hampden County. Despite efforts, "the problem so far has eluded resolution, and may even be growing worse. It is time to recognize this for what it is -- a constitutional emergency; we simply cannot continue to allow so many parents and children to be denied their right to a timely 72-hour hearing." Judge Gants specifically asked the Legislature "to consider increasing the hourly rate for CPCS bar advocates who represent parents and children in family law cases from $55 to $80 so that more attorneys can afford to do this work." You can see Supreme Judicial Court Chief Justice Gants "state of the judiciary" here: https://www.mass.gov/files/documents/2017/10/26/2017-state-of-the-judiciary-gants.pdf

In the Wake of Walt: Filing a Single Justice Appeal

By Lisa Augusto and Katrina Rusteika

Single Justice Petitions

If the court makes a ruling that you want to challenge, but that ruling isn't considered a "final judgment," then you should consider filing an interlocutory appeal. This is commonly referred to as a "single justice petition" because it goes before a single justice of the Appeals Court, rather than a three-judge panel. Unlike final appeals, single justice petitions do not require you to file a notice of appeal. Instead, the clock starts ticking from the date the court enters the order on the docket. You have thirty (30) days from that date to submit your petition to the Appeals Court. See G.L. c. 231, s. 118. It is important to remember that failing to raise an interlocutory issue through the single justice process often waives the issue entirely, as it will be considered unpreserved (and likely moot) by the time a final appeal can be filed.

If you are going to file a single justice appeal, be sure to read the Appeals Court standing order for important information*

When might a single justice petition be appropriate to file? If you want to appeal the court's decision to grant DCF custody after a 72 hour hearing or if the court fails to hold a 72-hour hearing. Or when DCF has failed to make reasonable efforts to avoid the removal of a child. *Care & Protection of Walt*, 478 Mass. 212 (2017). Indeed, because challenges to DCF's reasonable efforts must be made before a trial on the merits (*Adoption of Gregory*, 434 Mass. 117 (2001)), any denial of a motion challenging DCF's reasonable efforts obligations is ripe for a single justice petition. Other common scenarios that you may want to challenge are denials of motions for visitation or increased visitation or challenges to custody changes during the proceeding (such as failure to have a third-party custody "Manuel hearing"). Also, if you wish to challenge a Child Requiring Assistance (CRA) adjudication, it must be brought through the single justice process by statute (G.L. c. 119, s. 39I), even though it is a final judgment.

Are you considering filing a single justice petition? The CAFL Appellate Panel Support Unit is here to help! We have new models on a variety of potential single justice topics available in Word format. We also have model single justice motions, checklists, and other resources on our website, at https://www.publiccounsel.net/cafl/professional/single-justice-practice/.

Counsel should anticipate a possible single justice appeal before their 72-hour hearing and be prepared to challenge any issue that they may later wish to appeal. The record needs to be preserved; so make sure to object when issues arise.

In the wake of Walt: Filing a Single Justice Appeal (cont.)

While trial counsel is responsible for filing and litigating the single justice appeals on their cases, we are here to help. If you are a member of the private panel, please contact CAFL staff attorney Lisa Augusto with any questions or to request a model petition to get you started. Attorney Augusto can be reached at (617) 910-5738 or laugusto@publiccounsel.net. You can also call one of the staff attorneys in the Trial Panel Support Unit or email them at caflattorney@publiccounsel.net. Please remember that you must send CAFL administration a copy of any single justice petition and memorandum of law you file. (CAFL Perf. Standard 4.6).

If you are a CPCS staff attorney and are interested in filing a single justice petition, please review the agency protocol and contact your CAFL supervisor.

Massachusetts Appeals Court

Final Appeals

If your client is appealing a final judgment (termination, permanent custody, permanent guardianship, CRA adjudication and a handful of other orders), please send a copy of: (1) the notice of appeal; (2) the motion for appointment of appellate counsel; and (3) a completed appellate assignment intake form to Katrina Rusteika, so that she can assign appellate counsel. Attorney Rusteika can be reached at (617) 910-5843 or krusteika@publiccounsel.net.

Note: It is very important to complete every question on the appellate intake form. Often we receive forms that have very little information and necessitate a back-and-forth with trial counsel that delays assignment of appellate counsel. Please also include any other information we should know, such as: client contact information, language interpreter needed, problems contacting the client, etc. Here is a link to the intake form and other key documents: https://www.publiccounsel.net/cafl/professional/administrative-matters-and-forms/.

On a final appeal, trial counsel remains appointed to represent clients on all trial-related issues even after the appellate lawyer is assigned. Trial counsel should work closely with appointed appellate

CAFL Newsletter Submissions

Do you have an idea for a practice tip or spotlight service of the month? Interested in publishing an announcement? Do you have feedback on how we can make the newsletter better? We invite you to contact the CAFL News editors:

Ann Narris *Anarris@publiccounsel.net* (617) 910-5746 or
Patrick Sadlon *Psadlon@publiccounsel.net* (617) 910-5745

Social Worker FAQ: how might a private retained social work expert help you in a case in light of Care and Protection of Walt?

By Meg Grant, CAFL Social Work Coordinator

Hiring a private social worker as part of your defense team can be the initial step in identifying and addressing the clinical issues a family is facing. By filing a motion under the Indigent Court Costs Act, attorneys can seek funds to hire their own expert social worker. You can contact me, the CAFL Social Worker Coordinator, to brainstorm about what type of social worker expert might be best for your case.

If you are thinking of hiring a social worker vendor, they are available to provide support in a variety of ways. They can provide case consultation, visit observations, and evaluations. While vendors cannot provide a direct service such as individual therapy or supervised visits, they can help identify additional resources for clients. Social workers can also advise an attorney about accommodations that may be needed for a client with a disability or the cultural appropriateness of different services.

In the wake of the recent Walt decision, it seems appropriate to discuss how social work vendors might be able to help at the 72 hour hearing stage. For example, perhaps a social worker expert could assess a third party placement option or custodian. During temporary custody hearings, the judge will often not consider a caregiver whose home has not been vetted by the Probation Department or DCF. It can be a struggle to get these assessments prior to the hearing. In these situations, a social work vendor could help.

In considering the Walt decision, a social worker could also help an attorney review a case and assess whether more supportive or more appropriate services should have been provided. A social worker can identify what services would best address the needs of the family to hasten reunification. You can also call me for a consultation—at the 72 hour hearing stage or later in the case—and we can discuss services that might help the family in your case. We can explore possible "reasonable efforts" that DCF could have taken to avoid removal or explore the various services that may help the family going forward.

As the social work coordinator, I have been working to identify the various areas of expertise of our social work vendors. It is our goal to match the skills of the vendor with the needs of the client. As always, we are working to add more vendors to our list, if you know anyone who might be a good fit for this work, please share my contact information: mgrant@publiccounsel.net .

I am also available for a telephone consultation to discuss the clinical aspects of your cases. If you are interested in speaking about a case, do not hesitate to email or call at mgrant@publiccounsel.net or 617-910-5839.

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