

CAFL NEWS

Volume 2, Issue 3

May 2018



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

With the coming of spring, we welcome in warmer weather and longer days, after what seemed like a very long winter. The CAFL Training Unit would also like to extend a warm welcome to the many attorneys who recently completed the CAFL Trial and Appellate Panel Certification trainings. Thank you to the many volunteers who helped make this training a success.

CAFL Thanks the UMass Medical School for Opioid and Care & Protection Training

The CAFL Training Unit would like to extend our appreciation to the University of Massachusetts Medical School Division of Addiction Psychiatry. This past March, physicians there organized a highly informative and engaging training for CAFL and DCF. The doctors spoke to the group about various issues that impact parents who suffer from either opioid dependence or a substance use disorder. Topics included: recommended treatment for both a mother with an opioid dependence and her newborn baby, the science around drug testing analysis, treating co-occurring mental health issues, and the use of medication as treatment for substance use disorders. We are grateful to the UMass doctors for giving of their time and considerable knowledge.

If you have a case involving substance use disorders, there are many resources now available online. To learn more about the current science around substance use disorders and to find treatment resources, you can visit:

- [The Substance Abuse and Mental Health Services Administration](#): Current clinical studies, resources and practice guidelines for parents and children with opioid dependence
- [Helplinema.org](#): Funded by the Massachusetts Bureau of Substance Addiction Services, provides statewide on-line database for finding substance use treatment and recovery services. Trained specialists are also available by phone.
- [State Without Stigma](#): Massachusetts initiative for working with people with opioid dependence
- [Massachusetts State Government Description of Services](#): lexicon description for treatment services and program
- [Western Massachusetts Opioid Treatment Options](#): description and locations of treatment facilities
- [Worcester Based Substance Use Treatment for Adults and Children at Community Healthlink](#)

Hoping to do some legal or clinical research for one of your cases?

HeinOnline is a resource where you can find law review articles, bar journals, historical statutes and regulations, federal legislative histories, classical treatises and much more. HeinOnline is available to Social Law members but this portal is also available in any of the 15 trial court law libraries, found in locations throughout the Commonwealth. To find a trial court law library near you, click here: <https://www.mass.gov/orgs/trial-court-law-libraries>

“THE OPPOSITE OF POVERTY IS NOT WEALTH. IN TOO MANY PLACES, THE OPPOSITE OF POVERTY IS JUSTICE.”

— [Bryan Stevenson](#)

Training Notices

Massachusetts Child Custody Jurisdiction: “Whose Case Is It?”

May 24, 2018, 2:00-4:00 PM

Massachusetts School of Law, Andover

RSVP: jdharoian@msn.com

Approved for 2 CAFL/CLE credits

Juvenile Court Training on Guardianship & Paternity

May 30, 2018, 1:00-4:00 PM

Springfield Juvenile Court

RSVP: michael@greenbergglawma.com

Approved for 3 CAFL/CLE Credits

Please note, this is not the Guardianship Certification training for CAFL

Enhancing Legal Representation through Social Work Intervention

May 30, 2018, 1:00-3:00 PM

Salem Juvenile Court

RSVP: fweiner@bradleymoorelaw.com

June 4, 2018, 2:00-4:00 PM

Worcester Law Library

RSVP: wcomeau@verizon.net

Approved for 2 CAFL/CLE Credits

Free

Youth at Risk Conference 2018

June 8, 2018, 8:00 A.M.-4:00 P.M.

Salem State University

For further information and registration, visit the Salem State University website:

<https://www.salemstate.edu/yar>

Approved for 6 CAFL/CLE credits

For a complete list of CAFL approved trainings visit <https://www.publiccounsel.net/cafl/training/>.

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**SAVE THE DATE: ANNUAL JUVENILE DELINQUENCY AND
CHILD WELFARE CONFERENCE**

**DECEMBER 14, 2018
MCLE BOSTON**

Notices and Announcements

Congratulations Attorney Ann Balmelli O'Connor & Other CPCS Annual Awards Winners

Attorney Ann Balmelli O'Connor was this year's recipient of the Margaret Winchester Child Welfare Advocacy Award. She, along with this year's other honorees, received their awards at the April 26th ceremony held at the John Adams Courthouse in Boston. Attorney Balmelli O'Connor serves as the Attorney-in-Charge of the CAFL Appeals Unit. Over the last several years, she has spear-headed a strategic litigation effort, teaming up with the staff offices to address systemic issues that parents and children face in our cases. She supported trial lawyers in their efforts to preserve various issues at the 72 hour hearing and went on to represent the father in the appeal, which led to the landmark decision of Care and Protection of Walt. Congratulations Attorney Balmelli O'Connor, on being this year's Margaret Winchester award winner. Congratulations, also, to the other 2018 CPCS annual award winners who are listed here.

Thurgood Marshall Award

Nancy T. Bennett

Jane Addams Award for Outstanding Social Service Accomplishments

Norman Beach

Edward J. Duggan Public Counsel Award for Outstanding Service

Richard D. LeBlanc

Paul J. Liacos Mental Health Advocacy Award

Karen Owen Talley

Edward J. Duggan Private Counsel Award for Outstanding Service

Jeanne Earley

Maura Mellen Administrative Professional Award

Bonnie E. Mullen

Jay D. Blitzman Award for Youth Advocacy

Ryan M. Schiff

Carol A. Donovan Award for Exceptional Advocacy

Wendy S. Wayne

Maria Souto-Armand Goyette Investigator Award

Eddie Coren, Jr.

Attorney Amy Karp Selected to Receive 2018 Mark Hardin Award

Amy Karp, CAFL's Training Director, has been selected to receive the 2018 American Bar Association Mark Hardin Award. This award is presented annually by the ABA to honor an attorney, law professor, judge, or legislator who has shown achievement and commitment to legal scholarship and change in the field of child welfare. Having joined CPCS as a staff attorney in 1995, Attorney Karp became CAFL's first Training Director in 2000. Attorney Karp has promoted the zealous advocacy for children and parents day in and day out, making the Massachusetts CAFL training program a national model of representation for parents and children. For any one of us who has practiced in the CAFL field, Amy Karp has touched our lives, improved our practice, and tirelessly supported us in fighting for families. Please join the rest of the CAFL Training Unit in congratulating Amy Karp for being named as this year's recipient of this prestigious award.

2017 Access & Fairness Survey Report Released

The Massachusetts Trial Court's 2017 *Access and Fairness* survey findings were released in February of this year. This report details the survey's results, which measured the courts' efforts to improve "access and fairness issues." The Trial Court's efforts are aimed at improving consumers' access to justice, especially for court users who are in need of language and disability assistance. The Trial Court also held staff training on the "counter" experience. The findings in this report show that ratings of access, fairness, and overall satisfaction with the court user experience do vary by racial and ethnic groups. To learn more about this project or participate in these reforms, visit this website for the [Massachusetts Access to Justice Commission](#).

Spotlight “Service of the Month”: On-Line Directory of Services for People Experiencing Hoarding Disorder

Hoarding Disorder is a relatively rare psychiatric condition that affects approximately 2-6% of the population. Of those who suffer from this condition, most are over the age of 55. People with a Hoarding Disorder excessively save items, which sometimes leads to extreme levels of clutter. This condition is also often linked to Obsessive Compulsive Disorder (OCD), depression, or anxiety. Many suffering from a Hoarding Disorder require therapeutic intervention such as Cognitive Behavioral Therapy (CBT). When parents experience this clinical condition, state child welfare agencies often become involved with the family and extreme “messy houses” can lead to homes being condemned and the removal of a child. But, it is important to know that Hoarding Disorders are treatable and people can often recover.

In April 2018, the Massachusetts Statewide Steering Committee on Hoarding (SSCH) and MassHousing published an online directory of services for people who experience this disorder. Partnering with community Hoarding Task Forces, the steering committee identified various services that might assist families with these needs. Services included:

- Clinical Mental Health Services
- Social and Medical Services (nurses, occupational therapists, etc.)
- Hoarding Informed Sorting and Clean Up Services
- Hoarding Emergency Clean-Out Services

The providers identified in this directory vary in their payment and location requirements. But, many of the providers are covered under MassHealth. The directory can be found online here: Masshousingrental.com. For more information about hoarding disorders, visit the International OCD Foundation Hoarding Center at www.iocdf.org

Evidentiary Tip: What is NOT Evidence?

What can judges consider when making their decisions? The “integrity of the process and the rights of the parties” require that the rules of evidence be followed. See MCLE Child Welfare Manual, Chapter 8. But some things that don’t look like “evidence” are still fair game. For example, a parent’s demeanor in court (on and off the witness stand) can be used as evidence in custody and unfitness determinations. See *O’Brien v. O’Brien*, 347 Mass. 765, 766 (1964). The court can take judicial notice of “adjudicative facts” that are not subject to reasonable dispute. See Massachusetts Guide to Evidence, Section 201. Witnesses may demonstrate the way something occurred. See *Commonwealth v. MacDonald*, 368 Mass. 395, 400 (1964).



But some things are not evidence, and attorneys should be diligent to ensure that judges don’t rely on them. Attorneys should object to the court taking notice of evidence admitted in prior care and protection proceedings, and they should also object to the admission of findings from prior proceedings involving siblings. Care and Protection of Zita, 455 Mass. 272, 290 (2009). (But courts *can* consider prior findings in a review and redetermination hearing from the same case.) Generally, pleadings, verbal proffers by attorneys, and attorney affidavits are not evidence. Adoption of Helen, 429

Mass. 856, 863-64 (1999). But statements made by an attorney may bind the attorney’s client when those statements are offered by an adverse party. Be vigilant - keep the court’s attention on evidence that can properly be admitted.

5 Recommended Ted Talks for the CAFL Professional

Beyond the Cliff, by Laura Van Dernoot Lipski. Ms. Lipski discusses the effects of secondary trauma that professionals experience when they are regularly exposed to stories of suffering. This humorous and engaging talk also gives “self care” and coping suggestions for anyone who may have compassion fatigue or vicarious trauma.

<https://www.youtube.com/watch?v=uOzDGrcvmus>

Your Body Language May Change Who You Are, by Amy Cuddy. The way you hold yourself and use your body changes not only your brain chemistry, but the way that people perceive you. This Ted Talk is especially helpful for any courtroom litigators.

https://www.ted.com/talks/amy_cuddy_your_body_language_shapes_who_you_are

We Need to Talk About an Injustice, by Bryan Stevenson. This engaging Ted Talk focuses on racial disparities in the criminal justice system. Mr. Stevenson highlights how one third of the male adult black population is incarcerated at some point in their lives and the impact this disparity has on the lives of people and our society as a whole.

https://www.ted.com/talks/bryan_stevenson_we_need_to_talk_about_an_injustice

I Believed in Shaken Baby Syndrome Until Science Showed I was Wrong, by pediatric neuropathologist Waney Squier. Dr. Squier is a former believer in the “classic” triad of SBS symptoms. But, new evidence convinced her to change her perspective and she explains her reasons for speaking out and discusses challenges she has faced when voicing her objections about this once “established” science.

[YouTube Ted Talk SBS](#)

The Danger of a Single Story. Novelist Chimamanda Adichie explains that “[t]he single story creates stereotypes, and the problem with stereotypes is not that they are untrue, but that they are incomplete. They make one story become the only story.” Through her own powerful storytelling, Ms. Adiche reminds us that we must challenge the single story DCF often tells about our clients and replace it with a more complete story that shows our client’s perspective and humanizes our clients and their families.

<https://www.ted.com/talks/>

[chimamanda_adichie_the_danger_of_a_single_story](#)



Know of a good Ted Talk you would like to share with your CAFL colleagues? Contact us at CAFLTraining@publiccounsel.net

“One Can Help” Offers Support and Resources for Court-Involved Families

One Can Help provides urgently needed resources that underserved court-involved children and families need in order to take positive steps forward. Whether it is a laptop needed for a teen to do homework, an after-school activity so a child is supervised, a bus pass so a struggling teen can attend job training, or emergency rent assistance to keep a family from homelessness, *One Can Help* provides resources that strengthen families. Learn about services and resources that can support families on your cases—and how to apply for this help on behalf of a client—here: www.onecanhelp.org.

Legal Updates

Governor Baker Signs Criminal Justice Reform Package

On April 13, 2018, Governor Charlie Baker signed the Criminal Justice Reform Package. This legislation is the product of bipartisan efforts from members of the state's House, the Senate, and the Judiciary Committee to improve the criminal justice system in Massachusetts. Lawmakers hope that this new law will make it possible for more people to be diverted into treatment and away from unneeded incarceration. This legislation is touted by the ACLU as "a critical step towards a fairer and more equal Massachusetts." Most of the provisions go into effect 90 days from signing.

Since many of our child clients are "dually involved" (i.e., involved with DCF and the delinquency system), CAFL attorneys should be aware of some provisions in the crime bill that directly impact youth. Among other things, it:

- raises the age of criminal responsibility from 7 years old to 12;
- decriminalizes the offense of "disturbing a school assembly" and "disorderly on school grounds";
- creates a presumption that a juvenile charged with prostitution is a victim of sex trafficking;
- creates a mechanism for judicial diversion of juveniles for less serious offenses;
- allows expungement of non-serious cases up to age 21 (for both juveniles and young adults);
- requires police to immediately notify DCF when a child in its custody is arrested; and
- requires the creation of a "childhood trauma task force."

The bill also amends G.L. c. 211D, sec. 2A to eliminate the \$150 counsel fee charged indigent juveniles. While not a common practice, this means courts may no longer assess a counsel fee against the child in a CRA proceeding. Finally, the bill requires judges to make written findings before imposing a sentence of incarceration on a person who is the primary caretaker of a child. To read this new bill and see commentary on its impact here in Massachusetts, click here: <https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter69> and http://www.masslive.com/politics/index.ssf/2018/04/gov_charlie_baker_signs_landma.html

The SJC Decides *Care and Protection of M.C.*

In April, the SJC decided *Care and Protection of M.C.*, found here: <http://www.sociallaw.com/services/slip-opinions/slip-opinion-details/care-and-protection-of-m.c>. In *M.C.*, the Court held that a parent's waiver of their fifth amendment right against self-incrimination in a care and protection case does not result in a waiver for purposes of a state criminal trial. While this ruling appears to provide parents who choose to testify in a C & P case protection from some collateral criminal consequences, significant concerns remain about the ramifications of the decision. The CAFL and Criminal Defense Training Units will send out a summary with practice tips to address the many issues *M.C.* raises for our clients with intersecting CAFL and criminal defense issues. For now, if you have a case in which the allegations against your client could lead to criminal investigation and/or charges, you should work closely with the client's criminal defense attorney if they already have one, throughout the case and on the issue of advising the client whether or not to testify in a care and protection proceeding. If the client has a criminal defense attorney, and the client is going to testify, request that the attorney be present in the courtroom during the client's testimony in order to fully advise the client. If the client does not have a criminal defense attorney, contact the CAFL Trial Support Unit at caflattorney@publiccounsel.net, or call Carol Rosensweig, Trial Panel Director, at (617) 910-5744. This case also addressed other issues of privilege and admissibility and is a "must read" for any CAFL attorney.



News

Care & Protection of Walt: Breathing New Life into the Decades-Old Policy of Foster Care as the Last Resort

On February 2, 2018, The Boston Bar Journal featured an article authored by Ann Balmelli O'Connor titled, *Care and Protection of Walt: Breathing New Life into the Decades-Old Policy of Foster Care as the Last Resort*. Click [here](#) to read this analysis about this game changing decision, where “the SJC has helped to ensure that DCF will follow the law, so that separating families and placing children in an overburdened foster care system truly will be the agency’s last resort.”

National Child Abuse Prevention Month

April was National Child Abuse Prevention Month. As part of this month’s focus, the Children’s Bureau has highlighted Nurturing Parenting Programs, such as the [Family Nurturing Center of Massachusetts](#), as resources designed to strengthen families. Learn more about similar preventative service models here: [Nurturing parenting Programs Officer Resources](#). Or, to learn more about child abuse prevention, including resources for both parents and practitioners, check out [Childwelfare.gov](#).

“Dawnland” Featured at Boston Independent Film Festival

On April 28, 2018, the featured film *Dawnland* was screened at the Boston Independent Film Festival. This in depth documentary centers around Maine’s “Truth and Reconciliation Commission.” The Commission was created in order to address the unnecessary and disproportionate removal of Native American children from their parents’ homes. The disparity in treatment of Native American families is the same condition which lead to the creation of the federal Indian and Child Welfare Act of 1978 (ICWA). *Dawnland* documents how this treatment haunts the Native American communities and even continues today, creating a repression of the children’s cultural heritage.

The makers of *Dawnland* showcase interviews with survivors throughout the generations and also show interviews from members of the Commission who are focused on healing the wounds caused by the state’s treatment of the Native American families.

To learn more and find additional screening information of this documentary, click here: <http://dawnland.org/>.

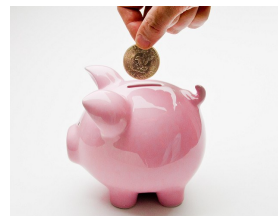
To find the CAFL practice advisory for ICWA, click here: [CAFL Trial Attorney ICWA Practice Advisory](#).



Legal Practice Tip: Keeping Financial Resources with the Family

by Emily Herder, Esq.

If a child has a disability or if a child's parent is deceased, the child may be receiving federal Supplemental Security Income (SSI) or Social Security death benefits. When a minor is eligible for benefits, the Social Security Administration (SSA) makes the payments directly to the adult or agency designated as the child's "representative payee." This means that a parent can lose the SSI or social security payments if a child enters DCF custody. Losing these payments can have catastrophic consequences for families who need the money to maintain the household so the child can return. How can you advocate for your parent to continue to be the child's representative-payee?



1. As soon as this issue presents itself, find out whether DCF will agree to wait to file an application to be designated as the child's rep-payee. Under DCF policy, social workers are supposed to notify the parent in writing of their intent to change the rep-payee designee. See DCF Policy # 84-007. Attorneys should then start by negotiating with DCF. In doing so, you can point to the regulatory framework of the SSA. The Social Security Administration states that its primary concern is "to select the payee who will be serve the beneficiary's interest." 20 C.F.R. § 404.2021. You can argue that the child's interests are tied to going home. DCF's own policies acknowledge that the "SSA may prefer to designate the parent(s)/guardian as Representative Payee if she/he demonstrates a strong interest in the child's well-being, visits regularly, pays a child support fee and/or reunification is planned within one year." The SSA also sets out a rep-payee designation preference. Highest on the list of preferences is the child's parent, regardless of whether the parent has custody. "An authorized social agency or custodial institution" is last on the SSA's list of preferences. 20 C.F.R. § 404.2021(c).
2. Lawyers can also point to DCF's own regulations. Arguments might be available that DCF is abusing its discretion by filing to be the child's rep-payee in the circumstances of your case. While DCF's regulations give the social workers discretion in deciding whether to seek SSI rep-payee status on behalf of a child, that discretion is not unfettered. 110 C.M.R. 4.09 sets out that the decision making should be individualized, on a case-by-case basis, factoring in the family's circumstances. Specifically, the regulations suggest some flexibility in how DCF might divvy up the payments with the parents. DCF may allow a non-custodial parent to remain rep-payee and either: (a) have that parent pay DCF 75% of the benefits they receive; or (b) DCF may take 0% of the benefits if the parent's income is at or below 150% of the federal poverty level.
3. If more than one child in the family is receiving payments, you can also negotiate a different plan for each child. For example, under 110 C.M.R. 4.01(1)(a), DCF could allow a parent to continue receiving benefits for one of the children and DCF would apply to be rep-payee for another. Or, if a child is entitled to benefits for a disability and survivor benefits, DCF could agree to seek rep-payee status for only one of those payments while the other remains with the family. You cannot seek review of DCF's decisions around becoming rep-payee for a child in its custody through a fair hearing. But, you can file a grievance under 110 CMR 10.36 et. seq. For more information on this process, please see Chapter 6 of the MCLE Child Welfare Manual.
4. If DCF plans to file for rep-payee status over your client's objection, you can consider seeking a preliminary injunction in court. This must be done promptly as once the paperwork is filed with the SSA, there is no way of knowing when the rep-payee will officially change or how long it will take to restore the parent as the designated rep-payee. If you are filing this type of a motion, ask DCF to agree to wait to file for rep-payee status until the motion is decided or you can seek an emergency order to prohibit DCF from filing the paperwork until the court has ruled on the motion.

Legal Practice Tip: Keeping Financial Resources with the Family

by Emily Herder, Esq.

5. The court's authority to order DCF to allow a parent to remain their designated rep-payee could be framed as an argument that the social worker has abused their discretion (where you can cite to their obligations under 110 CMR 4.09. Or, you can frame the argument to show that DCF has breached its duty to facilitate reunification. In such cases where DCF has failed to make reasonable efforts, it is arguably within the court's equitable authority to enter remedial orders, including an order providing that the parent will stay as rep-payee. See *Care and Protection of Walt*, 478 Mass. 212, 228-230 (2017).

Permitting the family to retain rep-payee status is a critical "effort" that DCF can make to restore the family. Taking steps to address this issue early in the case can be an important part of our advocacy for children and parents alike. It should be noted that the parent rep-payee has a fiduciary duty to the child and must spend the money in a way that is in the child's best interests. Parents should carefully document how the money is being spent and ensure the money is used for the benefit of the child—such as going towards the child's portion of expenses necessary to maintain the household or on things that permit visitation. It should also be noted that when DCF receives payments as the rep-payee for a child in its custody, it uses the bulk of that money to reimburse itself for the cost of foster care. The money does not typically go to benefit the child directly. For more information on social security benefits for children in foster care and how the money is spent, click here to read an in depth federal [Congressional Research](#) study. For more information about obligations of a rep-payee, please see this SSA guide: <https://www.ssa.gov/pubs/EN-05-10076.pdf>.

Where's Walt?



Beginning this month, the CAFL newsletter will highlight efforts by attorneys to use Care and Protection of Walt in their advocacy for their clients. In Walt, the SJC reiterated DCF's statutory obligation to make reasonable efforts to prevent a child's removal and to reunify the family when removal is necessary. The Walt court held that if DCF fails to make reasonable efforts to avoid removal, the court has *equitable authority* to order DCF to provide visitation and other services needed to remediate the harm caused to the family.

In a recent case, the mother's attorney advocated for her client to remain the representative payee for her disabled child. The attorney argued that DCF's obligation to make reasonable efforts included allowing the mother to use the SSI payments to maintain the household to which her child would return home. Without this income, the parent was at risk of losing her housing, which would make reunification more difficult. After filing her motion, and then a petition for interlocutory relief in the Appeals Court, DCF agreed to let the mother continue as rep payee.

Have you successfully used Care and Protection of Walt in your cases to make an argument or seek relief on behalf of your client? The CAFL Training Unit wants to hear about it! Please contact Katharine Klubock at Kklubock@publiccounsel.net and tell us your Walt stories.

Also, check out our Walt and model motions pages on MyGideon!
