

CAFL NEWS

Volume 2, Issue 3

June/July 2018

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

Along with National Reunification Month, June was effective communication month! In this edition of CAFL News, we are taking the opportunity to consider issues like client communication, language access, and effective writing. Included is an in-depth article on working with limited English proficient clients as well as information and instructions for using CPCS's new phone interpreter services for the private bar. And, in an effort to provide effective communication through the newsletter, we invite everyone to share their thoughts and ideas. Please send an email to CAFLTraining@publiccounsel.net if you would like to suggest a topic, contribute an article, make an announcement, or would like to provide feedback.



**“There is only one rule for being a good talker
— learn to listen”**

-Christopher Morley

Letting the Numbers Do the Talking: Using Statistical Data

Attorneys in child welfare cases are used to making legal arguments. But when decisions are not based on good clinical data, advocates also need to challenge the clinical rationale. Researching statistics on child welfare trends or clinical test results can help us both identify issues and frame our arguments. Weaving statistics into our arguments can challenge misconceptions about our clients or even act as an antidote to bias. Presenting statistical data and scientific trends forces the decision maker to think critically about an issue and avoid knee-jerk or emotional reactions. To present statistical data, you can attach statistical reports to your motions or pleadings that are filed at any stage throughout the case when you want to show the court statistics. The judge can consider this information as part of the legal framework from which they make their decisions. Or, you can ask the judge to make findings about the statistics if the source is reliable and the information is not in dispute. To do this, simply file a motion for the court to take judicial notice of the statistic as being an adjudicative fact. See [section 201 of the Massachusetts Guide to Evidence](#). Here are some websites that can help in your statistical research:

- DCF is required to report data to the state and federal legislature under various statutes. These required reports describe the statistics around a host of child welfare issues, focusing on outcomes related to placements, permanency results, removals, and various caseload information. DCF's statistical reports are supposed to be filed on a quarterly and annual basis. All available reports can be found here; <https://www.masslegalservices.org/library/directory/child-welfare/child-welfare-data-reports>
- The Annie E. Casey Foundation's Kids Count data center publishes data collected from child welfare agencies throughout the country and then reports the information by state. The data includes child welfare statistics but also information about poverty, housing, family structure and education indicators. <https://datacenter.kidscount.org/>
- For National data and reports that dive deeper into what the statistics mean for child welfare professionals, visit the federal Child Welfare Information Gateway: <https://www.childwelfare.gov/>

Training Notices

Applications being Accepted for Trial Panel Certification Training

CAFL is looking for zealous lawyers with a zest for fighting for their clients in and out of the courtroom. More and more families are facing state intervention; the numbers of children in state custody has skyrocketed. Families are separated and sometimes do not get their day in court because there are not enough lawyers to represent them, especially in Hampden and other western counties. Do you know someone who would do this job well and has the fortitude to represent children and parents embroiled in the child welfare system? Tell them to “come on down!” and join you on the panel. This fall we will be conducting a seven-day Trial Panel Certification Training. The first four days of the training (September 24-26 & October 2) will be presented at Sturbridge Host Hotel and Conference Center, 366 Main St, Sturbridge, MA 01566. For days five and six, attendees will attend either October 3 and 4 at Massachusetts Continuing Legal Education (MCLE) 10 Winter Place, Boston, OR on October 4 and 5 at the Massachusetts Bar Association, 1441 Main Street, Springfield. One-day mock hearings will be scheduled throughout the state on October 15-17, 2018. You can find the application and dates for submission of the application at: <https://www.publiccounsel.net/wp-content/uploads/CAFL-Trial-Panel-Training-Application-Fall-2018.doc>

Save The Date for the 19th Annual Delinquency and Child Welfare Conference at MCLE Boston on December 14, 2018

For a full list of trainings approved for CAFL CLE Credits, please see the CAFL CLE calendar at <https://www.publiccounsel.net/cafl/training/>

Recommended Podcast for the Legal Professional

Taking long trips across the Commonwealth to visit clients or go to court? We have a podcast that you might enjoy! Checkout NPR’s “[More Perfect.](#)” The producers delve into the stories behind United States Supreme Court decisions. As a spinoff of Radio Lab, the makers of this podcast felt that important Supreme Court rulings seemed “untouchable and even unknowable.” Using legal experts and interviewing people who were actually involved in the cases, More Perfect aims to explain what the USSC rulings mean for us in every day life. It also explores how the USSC works and the personalities of the various justices. For a great child-welfare related episode, listen to the June 17, 2016 More Perfect podcast: [Adoptive Couple V. Baby Veronica](#). In this 2013 opinion, the USSC reviewed South Carolina’s state custody decisions regarding a child whose father was a member of the Cherokee Nation. Specifically, the Court addressed the notice requirements under the 1978 Indian and Child Welfare Act (ICWA). In telling this story, the podcast explains the complicated history of the ICWA statute and how application of the law in the Baby Veronica case impacted the child, her birth family, her preadoptive family and the tribe .



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News and Announcements



On May 30, 2018, National Public Radio (NPR) aired a story entitled: **Domestic Violence's Overlooked Damage: Concussion and Brain Injury**. Victims of domestic violence often experience head trauma from abuse, and can suffer symptoms "such as headaches, exhaustion, dizziness or problems sleeping." Because head and neck injuries are some of the most common injuries for victims of domestic violence, traumatic brain injury (TBI) is common. Dr. Glynnis Ziemann of the Phoenix Institute reports that her research shows anxiety, depression and PTSD usually end up being severe problems. To learn more and hear this episode of "All Things Considered," click here: <https://www.npr.org/sections/health-shots/2018/05/30/613779769/domestic-violence-s-untold-damage-concussion-and-brain-injury>. For more information about Dr. Ziemann's work, go to <https://www.barrowneuro.org/get-to-know-barrow/person/glynnis-zieman-md/>.

Utah recently passed a "free range parenting" law. The first of such laws passed in the United States, this new piece of legislation is aimed at protecting parents from claims of neglect. For example, it permits "a child, whose basic needs are met and who is of sufficient age and maturity to avoid harm or unreasonable risk of harm, to engage in independent activities ..." This bill passed unanimously in both chambers of Utah's legislature. Notably, the law does not define "sufficient age."

Appointment of New Chief Justice of the Probate & Family Court. On May 15, 2018, Trial Court Chief Justice Paula M. Carey announced the appointment of Judge John D. Casey as Chief Justice of the Probate and Family Court to a five-year term commencing July 16, 2018. Judge Casey has served on the Probate and Family Court since 2006.

The "Families Belong Together" movement has taken center stage in the media as protestors across the country challenge the Trump administration's zero tolerance policy on immigration. Children had been systematically removed from their parents as a deterrent to other families wishing to cross the border. But, as this article describes, family separation occurs every day within our borders, as well. <https://slate.com/news-and-politics/2018/06/family-separation-happens-within-our-border-too.html>

Plymouth Courthouse gets a new name. At a ceremony on June 1, 2018, in Plymouth, the Massachusetts Trial Court celebrated the renaming of Plymouth Trial Court as the Therese Murray Trial Court. Therese Murray served as a State Senator representing the Plymouth and Barnstable Counties from 1993-2015. She was the first woman to serve as Senate President from 2007-2015.

DCF has prepared and submitted to the U.S. Department of Health and Human Services, Administration for Children and Families, the Social Services Block Grant (SSBG) Pre-Expenditure Report for SFY19. This document provides some insight on the DCF budget and how the agency spends its resources. On July 23, the Department and the Executive Office of Health and Human Services conducted a public hearing to obtain solicit comment and feedback on the report.

Evidentiary Tip: The Witness Who Just Can't Remember

Witnesses are often asked to remember details about different events that happen throughout the life of a case. Many times witnesses are asked about specific dates or important facts. But, witnesses are under when testifying and this can cause any witness to have a hard time recalling information. Or, some witnesses are just prone to have trouble remembering. In these situations, attorneys can seek to refresh a witnesses' recollection. See Ch. 8.4.3 of the MCLE Child Welfare Manual. Here are some tips for a lawyer faced with the dilemma of a forgetful witness in court:

- Sometimes you can just lead the witness and this will not draw an objection. If you are asking the witness about a discreet and uncontroverted fact, for example, you might be able to simply lead the witness and provide the answer. Opposing counsel may not object to a question like: "The visit happened on March 3rd, 2018, correct?"
- Alternatively, you can give the witness a hint by including the fact in a "headnote". For example, "let's turn our attention to the March 3rd visit."
- Or, you can formally refresh a witness's recollection. To do this, the witness has to say that they cannot remember or that their memory is "exhausted." If the witness simply says that they don't know, that is not the time to refresh their recollection. Negative responses are not the same as a witness saying that they cannot remember. (Evasive witnesses come with a different set of problems.)
- You can use anything to refresh a witness's recollection: documents, objections, or even leading questions. Typically, this is done with a document. The witness does not need to be the author of the document that they are shown.
- After establishing that the witness cannot remember the fact or event, you must ask whether the document or object would help the witness to remember. With permission to approach, you can hand over the document. The witness must look at the document and then put it down. They cannot read from the document. The witness should be able to testify independently based upon their present recollection now that they remember.
- After reviewing the item that is meant to refresh the witness's recollection, the attorney offering the evidence should ask, "Is your memory refreshed?" Then (assuming the answer is "yes") take away the item and repeat the question. (*con't on page 5*)



Image taken from

<http://www.forensicsciencesimplified.org/legal/>

Practice Tools Available on MyGideon

We have a handy refreshing recollection practice tool available on MyGideon. It covers impeachment, too. Print a copy to keep in your trial notebook. You can find it and other tools at www.mygideon.org. Log in, select "Children & Family Law Resources," then "Practice Tools."

Evidentiary Tip: The Witness Who Just Can't Remember (con't)

- The attorney who is using a document or object to refresh the witness's recollection does not need to give it to the attorneys in advance in order for them to inspect it, but the other lawyers do have the right to see the document before they cross examine that witness. See *Commonwealth v. O'Brien*, 419 Mass. 470, 478 (1995). Counsel should think about whether they want to waive any privilege that may be attached to the document used to refresh recollection.

Ideally, the art of refreshing a witness's recollection should feel like a dance. You can prepare your witness for what refreshing recollection will look like in the event that it is needed in your hearing. The best way to ensure that a witness can communicate effectively and recall the important information on your case is to thoroughly prepare your witnesses in advance. Discuss the types of questions you will ask, advise them about who else will be in the room and what the other lawyers might also be asking. If there are important dates that you will be asking about, tell the witness in advance. Help each witness practice saying their story in their own words and in a way that gets out the details that are important to your theory of the case. If you conduct a mock examination with the witness, they can also practice listening to the question and giving an answer that is tailored to what they are asked. Attorneys can assist their witnesses by beginning an examination with simple, easy questions to get them comfortable.

Quick Reference: How to Refresh Recollection

1. Establish that the witness can't remember.
2. Establish that something will help the witness remember.
3. Ask the judge for permission to approach the witness.
4. Show the "something" to the witness.
5. Direct the witness to read to themselves or review the "something" and look up when they're done.
6. Establish that the witness' memory is refreshed.
7. Take away the "something".
8. Re-ask the question.
9. Ask the question again

Update: Care and Protection of Walt

At the CPCS annual training conference in May, a panel presented on how Care and Protection of Walt has been used by attorneys throughout the Commonwealth. Some of the materials from that session are now available on MyGideon on the CPCS Children and Family Law Resources page. By clicking on the "Walt" link, you will find a copy of the decision, the SJC oral argument, a list of factors for the court to consider when determining whether to make a "no reasonable efforts finding," Judge Edwards' Reasonable Efforts Training materials, and links to various model memoranda to support your motion. If you have any questions about accessing your MyGideon account, please contact us at CAFLTraining@publiccounsel.net. The CAFL Training Unit would also like to hear your stories about how Walt is being used in the trial courts. Have you cited Walt in a case to support an argument about reasonable efforts? Has Walt helped you persuade a judge that they have equitable authority to issue orders in a case? Tell us about it! Please submit any of your Walt stories to: Walt@publiccounsel.net.



Legal Updates

[Commonwealth v. Pickering](#), 479 Mass. 489 (2018) (Psychotherapeutic privilege in group therapy)

This case involved the probation revocation of a man convicted on two counts of open and gross lewdness. The defendant appealed the revocation of his probation, raising a challenge to the court's refusal to admit evidence of conversations that took place in group therapy. While this is a criminal case, this decision is relevant to the child welfare lawyer. The SJC made clear that the legal issue of whether the psychotherapeutic privilege applies to group settings remains unanswered. Attorneys should advise their clients appropriately as it is common for our clients to be in domestic violence, parenting, substance use or trauma recovery groups. There is no black letter law yet that says communications taking place in these settings are privileged. At the very least, a patient hoping to evoke this privilege has to show that the group leader qualifies under the statute so as to trigger the privilege. The SJC reminded us that "[the psychotherapist-patient privilege only applies where the therapy is administered by a 'psychotherapist,' as that term is defined by G. L. c. 233, § 20B." Additionally, the client must then affirmatively evoke the privilege at the hearing. Until this legal issue is decided, clients need to know that that communication in group therapy (even anonymous groups) is not privileged.

[Adoption of Lisette](#), 93 Mass. App. Ct. 284 (2018) & [Adoption of Virgil](#), 93 Mass. App. Ct. 298 (2018) (substance use disorder treatment records)

In the recent cases of [Adoption of Lisette](#) and [Adoption of Virgil](#), the Appeals Court upheld the trial court's decision to allow into evidence substance use disorder treatment records. A summary of those cases is now available at <https://www.publiccounsel.net/cafl/professional/relevant-statutes-and-case-law/summaries-of-recent-decisions/>. The full opinions can be found at <http://masscases.com/cases/app/93/93massappct284.html> and <http://masscases.com/cases/app/93/93massappct298.html>.

[Adoption of Raissa](#), 93 Mass. App. Ct. 447 (right to counsel not absolute)

On June 22, 2018, the Massachusetts Appeals Court issued a decision which reminds us that the right to counsel is not absolute. A parent may be deemed to have waived their right to counsel by their conduct. Waiver by conduct may occur where: (1) the judge expressly warns the parent that their behavior will result in the loss of their right to counsel and explains the consequences of proceeding without counsel, and (2) the parent then engages in the misconduct about which they were warned. The parent's acts must be "highly disruptive of orderly or safe proceedings" to be deemed waiver by conduct. They do not need to be violent or threatening. The judge must weigh the parent's constitutional protections against the interest of judicial efficiency and the rights of the child. A case summary is available at <https://www.publiccounsel.net/cafl/professional/relevant-statutes-and-case-law/summaries-of-recent-decisions/>. The full opinion can be found at <http://masscases.com/cases/app/93/93massappct447.html>.



Advocating Effectively on Behalf of Limited English Clients

by Tere Ramos, Esq

Language-access rights are crucial in a person's life. Without access to a known language, a person can unwittingly waive the right to something as fundamental as liberty. The legal obligation to ensure language access stems from Title VI of the Civil Rights Act of 1964, which has been further clarified through executive orders, federal agencies' guidance, and the case law. Under Title VI, recipients of federal funding must ensure meaningful access by limited English proficient (LEP) persons to programs and benefits. Title VI requires recipients of federal financial assistance to "take reasonable steps" to provide "information in appropriate languages" to limited English proficient persons so that they are effectively informed of or able to participate in the recipient's program. (See [Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons](#), 67 Fed. Reg. 41455, 41455, 41463 (June 18, 2002)).

Under Title VI, DCF must deliver services to LEP consumers without delay and in the same manner that it would to fluent English speakers. Documents should be translated and efforts must be made to have interpreters available during meetings, phone calls, and clinical assessments. If you want more information about your client's language access rights, you can reach out to the [Massachusetts Language Access Coalition](#). DCF's publically available language access plan can be found here: <https://www.mass.gov/files/documents/2016/10/sd/2013-dcf-lap.pdf>. Failure of DCF to provide language access amounts to discrimination based on the client's national origin.

Language assistance usually means interpretation and translation services. According to federal guidelines, everyone who is LEP has a right to an interpreter, regardless of the frequency or uniqueness of their language. A common misconception is that interpreters need certification. The certification requirement exists in MA only in the courts and hospitals. Federal guidelines state that an interpreter must be competent in the skill of interpretation. The interpreter must have knowledge in both languages of any specialized terms or concepts peculiar to the entity's programs or activities. The interpreter must also understand and follow confidentiality and impartiality rules, without deviating from the interpreter role to offer advice or serve in another capacity. Be aware that competency to interpret requires more than self-identification as bilingual. A person may be able to communicate effectively in a different language when communicating directly in that language, but not be competent to interpret in and out of English. Interpretation also needs to occur in a timely manner, without the imposition of a delay.

Written materials must be translated into the language of each frequently encountered language group likely to be served by the program. Vital materials are documents critical to access a program, such as consent and complaint forms; intake forms; written notices of rights, denials, or changes in benefits; notices of disciplinary action; and applications to participate in a recipient's program. Similar to interpreters, having a certified translator may be necessary, although it is not a requirement. Translators need to understand the reading level of the intended audience and verify the translated document is consistent in the terms used. Google translate is never an appropriate translation method. The Justice Department guidance includes a "safe harbor" provision that, if followed, gives strong evidence of the recipient's compliance with the document-translation obligation: the recipient offers "written translations of vital documents for each eligible [limited English proficient] language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered." (continued on page 8)

Advocating Effectively on behalf of Limited English Clients

by Tere Ramos, Esq (continued from page 7)

If fewer than 50 persons are in a language group that reaches the 5 percent trigger, “the recipient does not translate vital written materials but provides written notice in the primary language of the [limited English proficient] language group of the right to receive competent oral interpretation of those written materials, free of cost.” The safe-harbor provision applies to the translation of written documents only and does not affect the requirement to provide interpretation services whenever they are needed and can be reasonably supplied. Attorneys need to prepare to work and maximize relationships with clients who are limited English proficient. Here are six tips to improve the quality of communication with a limited English proficient client.

Find the Right Interpreter- Before sitting down with a new client, identify the client’s language and country of origin. Some countries have many languages based on ethnicity, and those cultures may have a long history of war or conflict. Languages vary depending on region or country (think Brazilian Portuguese v. Portugal Portuguese). Depending on the type of case and the client you may prefer a female or male interpreter.

Budget Enough Time- Everything is said twice when using an interpreter, and cramming twice the amount of information into a standard appointment slot is impossible. Think about how the conversation will be organized and plan ahead, this will streamline your meeting. Many LEP clients do not have a high level of literacy in their own language. More complicated terms will increase confusion and slow down the conversation. Speak in plain English as much as possible, and pause every few sentences; it simplifies the interpretation work, and in turn the conversation will be easier to follow. Avoiding legalese. If using a legal term is critical, state the term and then define it in plain language, so the interpreter is explaining the law rather than using a word that the client does not understand. Do not use idioms; they rarely translate well.

Prepare the Interpreter- Speak to the interpreter for a few minutes before the client joins the conversation. Verifying that the interpreter is qualified is important. Talk to the interpreter of their obligations around confidentiality. The interpreter should know the terms and vocabulary being used during the encounter. Prepare a list of more complicated and rare terms for the interpreter. If documents will be used at the meeting, share them in advance to save time and answer questions from the interpreter about them. Give the interpreter ground rules to follow to lessen misunderstandings. The interpreter must always speak in the first person (i.e., in the voice of the person being interpreted). It is confusing (and an outdated practice) when an interpreter uses the third person. Also, the client and the interpreter should not have side conversations. You want to be in control of the conversation; the interpreter should be as invisible as possible. If questions arise, the interpreter should be translating them to the appropriate person for clarification. The interpreter has to be impartial and cannot take sides or advocate on behalf of a party.

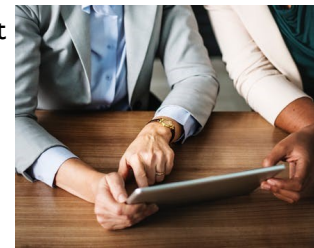
Set Expectations with the Limited English Proficient Client- Just as the interpreter needs to understand the ground rules, the limited English proficient client needs to be prepared to work effectively with an interpreter. Introduce yourself to the client in first person. Then introduce the interpreter and allow a quick exchange to ensure the client and the interpreter understand each other. Ask the interpreter and the client, “Do you know each other?” In some small ethnic communities, finding interpreters who do not run in the same social circles can be difficult. Explain that the interpreter will be interpreting so that you and the client can communicate directly. Ask the client to stop every few sentences and speak clearly so the interpreter will not miss anything. Tell the client to speak to you directly. Explain that you— not the interpreter—will answer the questions. (continued on page 9)

Advocating Effectively on behalf of Limited English Clients

by Tere Ramos, Esq. (continued from page 8)

Manage the Relationship During the Meeting- Remember that the interpreter should be as invisible as possible during the meeting. Sit with the interpreter next to you or behind the client. If possible, have the client sit facing you. Keep eye contact with the client as much as possible, especially when speaking to the client. Watch for nonverbal cues that are difficult for the interpreter to copy—for example, the tone of the conversation, facial expressions, or hand gestures. If the client is confused at some point in the conversation, a facial expression may be the best indication. The client's expression may also signal that the interpreter is making the client uncomfortable or that the interpreter is not being clear in the interpretation. If the client is uncomfortable, the client may omit important facts or parts of a story. When this happens, you must slow down and figure out what is happening and whether the client fears the space is not safe.

You Are in Charge- If any of the problems mentioned occur, interrupt the conversation. For example, you must stop a side conversation between the client and interpreter as soon as possible. If the interpreter is using too few or too many words in comparison to the client's and your comments, stop the conversation. The interpreter might be "sanitizing" the story—sharing a summary rather than a word-for-word interpretation or adding information that was not in the original comment. If your gut tells you that things are not going well, stop. End the meeting or the call with the phone interpreter. Restart with a different interpreter.



Language Access Resources

Did you know that there is a language access page on MyGideon? You will find: PowerPoint presentations on the rights of people with limited English proficiency and working with interpreters, translation and interpretation resources; federal guidance from HHS and DOJ; and more. You will also find a recent decision letter from the Federal Office of Civil Rights (OCR) regarding its investigation of a complaint alleging that DCF discriminated against a father based on his national origin by failing to provide him with an interpreter or written translations. OCR concluded that DCF's policies and procedures for providing interpreter services to limited English proficient individuals may lead to inconsistent provision of such services. The decision letter outlines OCR's concerns about DCF's practices, policies, and procedures, and proposes compliance measures that DCF should take to ensure compliance with Title VI of the Civil Rights Act. Log in to [MyGideon](#) to learn more!

Need an interpreter? The Office of Court Interpreter Services (OCIS) has a list of all out-of-court interpreters broken down by language and county, which can be found here: [Interpreter Services](#). Interpreters can be used to both translate documents or correspondence and interpret during client interviews. You do not need an approved motion for funds unless the total cost of interpreter services for the case exceeds \$500. Simply use your Notice of Assignment of Counsel (NAC) number and the interpreter will submit the invoice to CPCS for your approval and payment. However if the total interpreter services payable on the case exceeds \$500, an allowed motion filed by counsel is required before payment exceeding \$500 will be made. Attorneys should file a motion seeking the amount of funds needed for the case including the amounts paid below the \$500 threshold. **For more information on the vendor billing requirements, see the CPCS Vendor Manual, here <https://www.publiccounsel.net/gc/wp-content/uploads/sites/2/2014/06/Court-Cost-Vendor-Manual-June-8-2016.pdf>**

Social Worker FAQ: What Defense Attorneys Should Know about Bonding and Attachment

By Meg Grant, CAFL Social Work Coordinator



In child welfare cases, social workers and clinicians often talk about a child's attachment or bonding to their caregivers. But, what do those terms mean? Hint: they are not the same thing and they are not interchangeable.

Attachment refers to the unique and lasting emotional ties that a one person forms towards another. One person can be very attached to a person while the other person has no attachment at all. Clinicians often describe the quality of an attachment as being healthy, insecure, anxious or disorganized. A clinical bond is different and exists when a healthy reciprocal attachment is formed between two people. So a parent and a child can form bonds between one another. This is why substantial parenting time for newborns is so important: infants need the opportunity to bond with their parents.

Defense attorneys need to know that children can be bonded to two or more caregivers. Additionally, the fact that a child is able to form a bond with one caregiver means that they are able to do so again. The fact that a child has developed a clinical bond with an adoptive/foster parent, for example, does not mean that the child does not also have a bond with their biological parent or should not return home.

It is also important for defense attorneys to remember that when a child reunifies with their family, it is not a placement disruption. Reunification can be done thoughtfully so as to minimize any disruption to the child caused by separating from a caregiver with whom the child has formed an attachment. If someone on your case is arguing that the child's healthy attachment to a substitute caregiver is grounds for not returning the child home, you can challenge that premise. A consulting expert can advise you on the clinical science that exists around attachment so you can dispel any misconceptions that social workers or the court may have. Experts can educate the social workers or the court about bonding and how to plan for reunification in light of the child's bond to another person. Additionally, an expert may be able to help identify services or clinical supports that would help alleviate any stress caused to the child by returning home. For example, perhaps a plan can be made whereby the foster parent would continue to be in the child's life? Perhaps some therapeutic supports can be put into place to help the child transition home? A social work expert can be invaluable in developing this sort of plan.

At the end of the day, if a defense attorney would like to either prove the existence of a bond or challenge DCF's theory of the case around bonding, a bonding evaluation/assessment might be needed. Private panel attorneys can contact me, Meg Grant, the social work coordinator, to strategize on what questions need to be answered and to identify the right type of expert. CAFL staff attorneys can work with social workers in the staff offices to determine what steps make sense in their case. Only a qualified clinician can conduct a bonding evaluation/assessment to determine the clinical bonding and needs for children. A DCF case worker may not be qualified to provide evidence regarding a child's bond to a particular caregiver and defense attorneys need to be ready to present evidence to challenge this issue should it arise on your case. I can also be reached at (617) 910-5839 or Mgrant@publiccounsel.net to arrange a phone consultation.

Litigating bonding issues:

While bonding with a substitute caregiver is a factor that a judge can consider in determining, it cannot be used as a "dispositive consideration." *Adoption of Nicole*, 40 Mass. App. Ct. 259, 262-263 (1996). In *Adoption of Rhona*, 63 Mass. App. Ct. 117, 126-127 (2005), the appeals court ruled: "We interpreted G. L. c. 210, § 3(c) (vii), to require a judge to make certain explicit findings when bonding and the resulting trauma due to severing such an attachment becomes a primary consideration 'in assessing parental unfitness'". (continued on page 11)

Litigating Bonding Issues (continued)

The judge must find:

- (1) The child has a strong, positive bond with the substitute caretaker;
 - (2) The bond has existed for a substantial portion of the child's life;
 - (3) Removal will cause serious psychological harm; and
 - (4) The parent cannot meet the child's special needs (with services) resulting from the harm of removal.
- Counsel can challenge any one of these prongs when bonding is an issue in the case.

Legal Writing Tip: Active v. Passive Voice



If you are looking to take your legal writing to the next level, try using the active voice. Sentences in the active voice are often more concise, less cumbersome and clearer. So, what is the difference between the active and the passive voice? With the active voice, the subject performs the action. The passive voice occurs when the subject of the clause doesn't perform the action but instead has something done to it. In his book *The Winning Brief*, Bryan A. Garner gives this example:

Passive: The deadline was missed by defense counsel.

Active: Defense counsel missed the deadline.

Often the active voice is stronger and more persuasive and as a general rule, using the active voice is better. But, there are times when using the passive voice might be the right choice. The passive voice tends to omit the identity of the actor. For example, if you want to concede a fact but not emphasize a person's role in the event, the passive voice could be used. "The child was left at home alone for an hour" might be better than "Mrs. King left her child home alone for one hour." Regardless of which voice you choose to use in any given sentence, it is important to be consistent in that sentence. Mixing the two voices within a sentence can be hard to follow. For example, avoid sentences like, "He *tried* to feed the child a bottle when she cried, but he was still *redirected* by the social worker." Instead, write, "He tried to feed the child a bottle but the social worker redirected him." By using the active and passive voice thoughtfully, you will keep the reader interested—always an important goal.

Administrative Reminder: Client Contact

The CAFL Performance Standards, section 1.5, addresses client communication. It sets out how prompt and regular communication is key to good representation. Since June was National Communication Month, the Trial Support Unit would like to give some friendly client-contact tips and reminders:

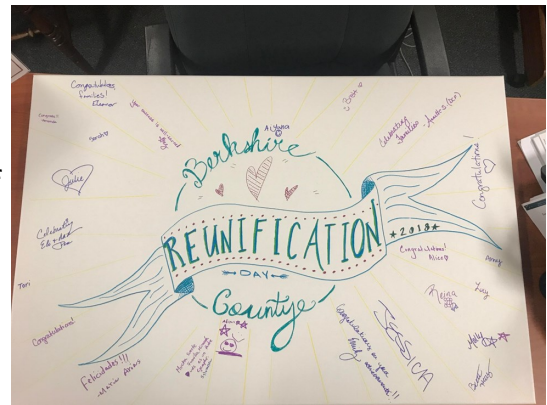
- Attorneys should be visiting their child clients *at least* once a quarter. Regular communication in the child's natural environment is important when representing children as children often need face-to-face contact in order to share information and form relationships;
- Children's attorneys should also meet with their child client at the child's placement promptly after appointment;
- Each attorney needs to have an easily accessible professional space in their county where they can meet with their clients privately;
- If a client has a disability or limited English proficiency, attorneys should take whatever steps are necessary so that they can communicate effectively and to ensure that the client can understand what is happening in their case; and
- Attorneys who represent clients who are incarcerated should visit their clients in jail regularly and update them on the status of the case. DCF regulations require clinical meetings to occur at the facility, so attorneys should ensure that they are. Incarcerated clients are easily cut out of the communication and case planning so attorneys must advocate to keep them involved as much as possible.

If you need support around anything having to do with your client communication, please contact the CAFL trial panel support unit at: (617) 482-6212. Or, reach out to your county resource attorney, whose contact information can be found here: <https://www.publiccounsel.net/cafl/private-counsel-trial-panel/resource-attorneys/>

2018 Reunification Day Celebration

By Victoria Bleier, Esq.

On Tuesday, June 12, 2018, local western Massachusetts agencies hosted the second biennial Berkshire County Reunification Day Celebration to recognize families who reunited after being separated through the child welfare system. This celebration was held in conjunction with National Reunification Month, which is celebrated around the country every June to honor the importance of the reunification of children with their families. Reunification Day was first celebrated in 2010 by the American Bar Association in collaboration with many national agencies. National Reunification Month celebrates the accomplishments of families who have overcome an array of challenges to reunify safely, recognizes the vital role that community partners play in strengthening families, and is designed to inspire other families in pursuit of successful reunification.



This year's Massachusetts Reunification Day event was hosted by Berkshire Children & Families, the Department of Children and Families, and the Committee for Public Counsel Services – Children and Family Law Division (CAFL), in collaboration with the Berkshire Juvenile Court and the local bar. The celebration was held at the Berkshire Children and Families' Family Resource Center (FRC) and honored three local families for their reunification success. Colleen White Holmes, CEO & President of Berkshire Children and Families; The Honorable Joan M. McMenemy, First Justice of the Berkshire Juvenile Court; Margie Gilberti, Pittsfield DCF Director of Areas; Michael Dsida, Deputy Chief Counsel of CAFL; and Tricia Farley-Bouvier, State Representative, addressed the audience. Brian Litscher, a local CAFL private panel attorney, entertained the crowd with an a cappella performance of "Somewhere" from West Side Story.

The honored families were presented with certificates from Judge McMenemy and senate citations from State Senator Adams Hinds' office. The families each received passes donated by local attractions and fun summer gifts donated by CAFL and local businesses. Food, arts and crafts, balloon animals, photo booth fun, and face painting followed the structured portion of the celebration. A commemorative canvas, designed by CAFL Attorney Emily Herder, was decorated by the attendees, and will be displayed at the Berkshire Children and Families' FRC.

The Berkshire Eagle covered the event and published a story detailing the reunification efforts of one of the families honored, the Miranda Family. The article can be found [here](#).

Want to plan an event in your county in 2019? If you are interested in planning a similar event in your county, the American Bar Association's website provides helpful resources to get started. The National Reunification Day website has a "Planning Tools" section which includes a proposed planning timeline, tips for the event, and sample documents. The [Planning a Successful Family Reunification Event](#) article by Jey Rajaraman is available [here](#). This informative ABA publication provides examples of concrete planning suggestions taken from reunification events hosted by Legal Services of New Jersey. These tips include:

- Create a planning committee (attorneys, local county judges, social workers, service organizations, etc.)
- Think about possible media you may want to involve or grant money that may be available to support your event (email Amy Karp, akarp@publiccounsel.net, for information about possible grant money)
- Decide on a nomination process and send out forms early
- Identify a theme and a speaker
- Involve families
- Make sure the event is appropriate for the children, as well as educational and interesting for all child welfare stakeholders