2018 JUVENILE COURT RULES
FOR THE CARE & PROTECTION OF CHILDREN
SUMMARY & COMMENTS

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The Massachusetts Supreme Judicial Court has issued new Juvenile Court Rules which go into effect on November 5, 2018. These rules were created by the Child Welfare Rules Committee, made up of Juvenile Court judges and court staff. The proposed rules were open to public comment, and the Committee for Public Counsel Services submitted written comments that were considered by the Rules Committee. You will find the Committee's "Notes" after each rule. These Notes provide important guidance about how we might expect the Rules to be implemented by the trial courts. The new 2018 rules will replace the 2007 Juvenile Court Rules for the Care and Protection of Children and can be found here: New Rules. Along with these Rules, the Juvenile Court has issued a new Standing Order 2-18 governing Time Standards for care and protection, CRA and delinquency cases. The new time standards also go into effect November 5, 2018. They can be found here: Standing Order 2-18.

IMPORTANT CHANGES TO THE JUVENILE COURT RULES

The word "paternity" is replaced by the gender-neutral term "parentage." (Rules 1, 5, 6, etc.)

Requires all motions to dismiss to be in writing. (Rule 7)

Creates a formal procedure for waiving the temporary custody hearing. (Rule 9)

Requires DCF social workers to submit a written report each time the case is before a judge. (Rule 10)

Extends the time for DCF to produce its file to counsel from 30 to 60 days. (Rule 13)

Court investigators may be summonsed into court for the 90-day status conference to respond to questions about the process of the investigation. (Rule 14)

Eliminates the full pretrial memorandum. Also changes the time for scheduling of the pretrial conference to eliminate the 120 day conference and instead requires that the conference occur at least 30 days before trial. (Rule 15)

Creation of a mandatory post-adjudication review hearing every six months if DCF has permanent custody of the child. (Rule 19)

Rules 1 and 2. Scope of the Rules *and* Definition of Terms

These rules apply to all actions in the Juvenile Court Department for the care and protection of children, including actions for guardianship of minors, child support, parentage, name change, and actions seeking to dispense with parental consent to adoption, custody, guardianship or any other disposition of the child pursuant to G. L. c. 119 and c. 210.

Rule 3. Precepts

New Rule 3 explains the precept process and outlines the procedure whereby a judge can order a child into court for identification. Historically, precepts have been used by judges when a child has run away or the child's whereabouts are unknown. Rule 3 is silent as to whether a precept can be issued only when DCF has custody or also in situations where the child is in the custody of a third party or a parent. The precept can be issued *sua sponte* or at the request of DCF (or the petitioner).

Rule 4. Appointment of Counsel

Although requirements for the appointment of counsel remain essentially unchanged, Rule 4's Note provides a helpful description of circumstances where an indigent parent has a right to court-appointed counsel under existing case law. It explains that parents and children are entitled to counsel in a contested guardianship case, and a parent may be entitled to counsel when the parent has filed a petition to remove a guardian and/or seek parenting time under the guardianship, provided the parent presents a meritorious claim. The rule incorporates all of the provisions concerning the appointment of counsel under SJC Rule 3:10, found here:

https://www.mass.gov/supreme-judicial-court-rules/supreme-judicial-court-rule-310-assignment-of-counsel.

Among other things, SJC Rule 3:10 describes the procedure for waiver of counsel, appointment of stand-by counsel, and the determination of indigency.

Rule 5. Process (summons and service of process)

Rule 5, which is essentially unchanged, describes how parties should receive notice of the proceedings. It provides that a child's parent, guardian, or legal custodian should be served in hand. This can be done by the court officer or anyone else approved by the court. If DCF is not the child's custodian, the agency should be given notice via certified or registered mail, return receipt requested, to the Office of Regional Counsel in the region where the case is filed. In a guardianship of a minor petition, the child age 14 or older who is not the petitioner is also entitled to service. Rule 5.2(a)(ii). Similarly, a child age 14 or older is entitled to service of the complaint in a parentage or child support case. Rule 5.3(b).

If DCF (or the petitioner) is unable to accomplish service after making diligent efforts, it can seek leave of court to make alternative service. To do this, the petitioner must file a written motion and affidavit. In these pleadings, the petitioner must set forth their diligent efforts to accomplish in-hand service or ascertain where the party lives. Some examples of alternative service identified in the Rule include certified mail or service by publication. Publication can also be a proper form of service if the parent's identity is unknown (often called "unknown/unnamed"). Rule 5 requires DCF to file a Military Affidavit if it is serving a parent via publication.

PRACTICE TIP: DUE PROCESS AND NOTICE

Service must also comply with principles of due process and must be "reasonably calculated under all the circumstances to apprise [the client] of the pendency of the action and afford them an opportunity to present their objections." Adoption of Hugh, 34 Mass. App. Ct. 345, 350 (1993), quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). When DCF's efforts to notify your client and involve them in the proceedings are lacking, object! For example, counsel can object if the proposed method of alternative service is insufficient. Counsel might challenge whether publication in a newspaper in the digital age is reasonably calculated to apprise a parent of their rights. Or, counsel might argue that DCF's efforts to notify their client resulted in undue delay or have hurt their client's ability to participate in the case.

When objecting to deficient notice, ask for specific relief that will cure the harm caused to your client. The court always has the authority to correct a deprivation of your client's constitutional rights. See Watson v. City of Memphis, 373 U.S. 526 (1963) ("affirmative judicial action was required to vindicate plain and present constitutional right").

Also, if DCF claims that your client's whereabouts are unknown, look to the 2017 DCF Assessment and Action Planning Policy for steps that DCF might take to find your client. Consider asking DCF to abide by its "missing parent/caregiver checklist." This checklist is attached as an addendum to the new policy and allows social workers to access statewide databases. The child's attorney might request that DCF search for missing parents because the child has their own interest in locating parents. Kinship placement options or supports for a child might be available from the mother's and/or father's side of the family. And defective notice may delay permanency for the child.

Rule 6. Filing of Birth Certificates

DCF has always had an obligation to file a certified copy of the child's birth certificate within sixty days of the filing of a care and protection petition. This remains unchanged. But, the clerk can now copy that certified birth certificate and file it with a guardianship, parentage or name change petition for that minor. Rule 6(B). This should make it easier for parties to file their guardianship packet with the court. The birth certificate must have been issued within sixty days of the filing of the care and protection case, or the petitioner will have to obtain a new certified copy. If a new birth certificate is needed and the petitioner does not have access to a certified copy of the birth certificate, that petitioner can move in the Juvenile Court to require the child's custodian to produce one. Rule 6's Note indicates that the petitioner in another court action can make a limited appearance in order to file the motion for production of the birth certificate.

Rules 7 and 8. Service and Form of Papers, and Appearances

Rule 7 is mostly unchanged from the prior version of the Rule. However, the court rules now require parties to file all motions to dismiss in writing. Such motions must be supported by an affidavit and should spell out the reasons for dismissal with particularity. The requirement for an affidavit in support of almost all motions remains. Motions must still be served seven days prior to the hearing (ten days if serving by mail). You can seek *ex parte* permission for a short order of notice in an emergency under Rule 7(D). Another change relates to the timing of service. The old Rule said "[e]very motion or other paper filed in court shall be *promptly* served" on the other parties. (Italics added.) The new Rule 7(E) removes the word "promptly" and instead states that motions and documents to be filed in court shall be served "in accordance with court procedure." Rule 8 simply tells us that all attorneys, including DCF lawyers, must file a notice of appearance in all cases.

PRACTICE TIP: MOTIONS TO DISMISS

Juvenile Court judges have long had differing views as to whether they have the authority to dismiss a care and protection petition over the objection of DCF prior to trial. Rule 7(C) seems to specifically contemplate such a motion. If you have a case where DCF would not prevail, even if they proved all of their allegations, consider filing a motion to dismiss. Rule 7 of the new Juvenile Court Rules is authority you can cite to say that yes, Juvenile Court judges do have authority to entertain such motions.

If DCF has not met its burden at the temporary custody hearing or at trial, you may want to ask the court for a "directed verdict" or a "required finding." If you refer to your oral motion as a "motion to dismiss" the judge or another party may point to the Rule and say the motion must be in writing, thus potentially delaying dismissal of the case. You can also argue that if DCF fails

to meet its burden, due process requires the child be returned home and the case dismissed and a court rule should not supersede the constitutional rights of parents and children.

Rule 9. Temporary Custody Hearing and Waiver

New Rule 9 contains some of the most important changes to the rules. Now, all waivers of the temporary custody hearing (including the 72-hour hearing) must be made in writing and must be certified by the waiving party's attorney on a form approved by the Chief Justice of the Juvenile Court. The judge will also conduct a full colloquy on the record. This resembles the requirements in the criminal court, where the attorneys certify that they have advised their clients thoroughly about the rights that they are giving up by waiving their hearing. The Notes to Rule 9 provide a clear reminder that the judge is still obligated to consider any third-party custodians nominated by any of the parties. Care and Protection of Manuel, 428 Mass. 527 (1998). The judge is also obligated to make reasonable efforts and contrary-to-the-welfare determinations under G.L. c. 119, § 29C.

PRACTICE TIPS:

REQUESTING RETURN OF CUSTODY & THIRD PARTY CUSTODY IN THE ALTERNATIVE

Some judges limit a party at the 72-hour hearing to either requesting a return of custody or nominating another to serve as temporary custodian. The first paragraph of the Note contemplates that a judge must consider both. It states that the judge "*must* determine whether custody should be removed from the parent…" (Italics added.) The next sentence states that the judge also "*must* consider any nomination by the child or the parents of a relative or other individual to become the temporary legal custodian…" (Italics added.). It is only in the second paragraph that the Note discusses "waiving" the right to seek return of custody and instead nominating a third party custodian. If you are practicing in a court where the judge will not let you request relief in the alternative, point to this Note to argue that the judge must consider both requests.

WAIVING A CHALLENGE TO CERTAIN ISSUES BUT LITIGATING OTHERS

The Note to Rule 9 contemplates that a party may waive certain issues at the temporary custody hearing but litigate others. For example, a party might not contest the temporary custody order but may wish to challenge whether DCF made reasonable efforts to eliminate the need to remove the child and seek remedial orders, including orders for specific services or parenting time. See Care and Protection of Walt, 478 Mass. 212 (2017). A limited stipulation of this type is clearly permitted under Rule 9. Also, a judge can continue the hearing so that a party can seek a home

study of a nominated third party custodian. Remember, a parent or child can request funds under the Indigent Court Costs Act for an expert to conduct a home study if the court probation officers are unable to complete a home study in a timely way.

The new Juvenile Court waiver form appears to be intended for use only if a party is waiving all parts of the hearing (i.e., the right to contest the child's removal from home, the right to nominate a third party custodian, and the right to challenge reasonable efforts). Even in those circumstances, there appears to be nothing in the Rule to bar the parties from also entering into a separate stipulation, for example agreeing to certain conditions on the temporary custody order.

CHALLENGING DCF PLACEMENT DECISIONS

The Note to Rule 9 clarifies that a hearing requesting temporary custody to a third party should not be referred to as a "placement hearing." Instead, decisions about "placement" are made by the child's custodian. It further states that placement decisions are left to the custodian's discretion, subject to an abuse of discretion standard of judicial review. However, DCF's discretion is not unfettered. To the contrary, there are numerous statutes and regulations that direct DCF in its placement decisions. In those situations, a judge can order DCF to comply with the law. See Matter of McKnight, 406 Mass. 787, 792 (1990), *citing* Attorney General v. Sheriff of Suffolk County, 394 Mass. 624, 629-630 (1985). For example, under G.L. c. 119, § 23(c), DCF is obligated to make specific efforts to place children with kin or siblings. G.L. c. 119, § 32 requires DCF to place the child in a family setting, absent special extraordinary circumstances. 110 CMR 7.101 also requires DCF to make specific placement decisions, placing them with siblings, close to their school of origin, in a place that allows frequent visitation with their family and so on. The Americans with Disabilities Act requires DCF to place the child somewhere that reasonably accommodates any disability of the child or parent. The Indian Child Welfare Act also has placement preferences that apply if the child's parents are eligible members of a federally recognized tribe.

Moreover, Care and Protection of Walt suggests that the court has equitable authority to make orders to alleviate the harm caused to a child or the parents by a removal when DCF failed to make reasonable efforts to avoid the removal. This equitable authority could very well extend to requiring DCF to make certain placement efforts in order to meet the child's best interests. For example, the court might require DCF to investigate kinship homes or sibling placements. Or, the court may give DCF custody for a limited duration while alternative caregivers are explored.

Rule 10. Written Reports by the Department

DCF social workers are now required to submit a written report each time the case is before a judge. The report must contain relevant information about the child, parent, substitute caregivers, the services being offered and provided to the family, and progress toward permanency. DCF must file this report two days in advance of the court date.

PRACTICE TIP: OBTAINING & OBJECTING TO DCF REPORTS

In some counties DCF routinely files "court reports" each time the case is in court. In other counties this practice will be new. While the Rule requires DCF to submit the report to the court two days in advance, it does not address services on the parties. Instead Rule 7(E) provides that any document filed in court shall be served on all parties "in accordance with court procedure." You should inquire about the procedure in your court for serving DCF reports and should request they be served electronically the day of filing to provide you an opportunity to review the report prior to the hearing. If the report is not filed and/or served in a timely way, you may want to object and ask that it be struck.

While the social worker's reports are "filed" with the court, they are not "in evidence" unless a party seeks to have them introduced in evidence at trial (or other evidentiary hearing). Care and Protection of Zita, 455 Mass. 272, 279-281 (2009). With the exception of the court investigator's report, no document is in evidence just because it is filed with the court. Nevertheless, always inform the court that you are reserving your right to file motions *in limine* to strike portions of the report if it is later offered into evidence. See Care and Protection of Bruce, 44 Mass. App. Ct. 758 (1998).

Rule 11. Investigator's Report in Care and Protection Cases

The Court Investigator's Report must be filed within sixty days of the investigator's appointment. A court investigator may seek an extension but that request must be submitted fourteen days prior to the deadline. Rule 11 also clarifies that attorneys do not need a motion to receive the court investigator's report form the Clerk's Office; it may be released without a court order.

Rule 12. Assignment of a Care and Protection Cases

Rule 12 requires the case to be assigned to a judge for future litigation after the temporary custody hearing.

Rule 13. Discovery

Rule 13 is identical to the old discovery rule with one notable exception. The time for DCF to provide the parties with a copy of its entire social services file has been extended from thirty to sixty days. As in the prior Rule, DCF's duty to produce the social services file is ongoing. Nobody can divulge these materials without a court order, except that an attorney can provide these materials to a retained expert. DCF can withhold privileged material, work product, or the names or identifying information of the foster or adoptive parents. However, DCF still must produce a list of the materials and information it withheld. Attorneys can seek additional discovery (interrogatories, depositions, production of additional documents) through a motion.

PRACTICE TIP: WHAT IF DCF IS NOT COMPLYING WITH ITS MANDATORY DISCOVERY?

The Juvenile Court Rules regarding mandatory discovery are clear and unambiguous. Nevertheless, counsel rarely receives a complete social services file in a timely way, nor are updates provided in a timely fashion. The new Rule 13 provides DCF an additional thirty days. It is hoped that the agency will be better able to comply with its discovery obligations now that it has been given this additional time. The right to discovery is important and fundamental to due process.

If DCF does not produce the file in a timely way, here are some steps you can take:

* Send a letter to DCF counsel immediately upon appointment requesting that DCF fulfill its discovery requirements within the deadline. Send a follow-up letter if it misses the deadline indicating you will need to file a motion to compel if the discovery obligations are not met within ten days. If DCF's production of documents is incomplete, let DCF know what types of files are missing. If DCF does not then make those documents available, you will have created a paper trail of your attempts to resolve the issues prior to seeking court action.

* Massachusetts Rule of Civil Procedure 37 addresses failure of a party to make required discovery. While the Rules of Civil Procedure are not applicable to care and protection proceedings in the Juvenile Courts, they are often applied by analogy. See Care and Protection of Zelda, 26 Mass. App. Ct. 869, 871 (1989). Parties should first file a Motion to Compel performance of the discovery requirements. Then, if DCF does not abide by that order, sanctions can be sought. Massachusetts Rule of Civil Procedure 37 lists possible evidentiary sanctions that may be ordered, including the exclusion of unproduced evidence or an order that certain witnesses may not testify. See also Juvenile Court Rule 17 providing for monetary sanctions in specified circumstances.

* You can appeal the denial of a discovery order to a Single Justice of the Appeals Court. G.L. c. 231, § 118(1).

* If you review the file that is produced and feel it is incomplete (missing 51B investigator dictation, 51B reports, forty five day foster care placement reports, etc.) go back and try to resolve the issue. But, you can always file additional motions with the court seeking that DCF comply with your client's discovery rights.

Rule 14. Status Hearing

As in the prior Rule, the court must schedule a status hearing within ninety days of the case being filed, but this hearing must occur after the Court Investigator's Report is filed. The Rule contains a non-exclusive list of matters that must be addressed, adding some additional items that were not included in the prior rule such as child identification, the Indian Child Welfare Act, DCF's plan to achieve permanence, and compliance with the Juvenile Court Standing Order regarding time standards. (Note that new time standards also go into effect on November 5, 2018.) As in the old Rule, the court shall address "any issues regarding services being offered or delivered to the family pending trial." The court shall also schedule the pre-trial conference.

The Rule eliminates the requirement that the attorneys file at the status hearing a written certification that they have discussed mediation.

The most significant changes to this Rule concern the Court Investigator's Report. The new Rule provides that at the hearing the Court Investigator's Report shall be attached to the petition and become part of the record. (Citing G.L. c. 119, § 24). The Note clarifies that parties may file motions in limine to strike portions of the report.

In addition, the new Rule permits the court or any party to summons in the court investigator for the status hearing. According to the Note, the purpose of the court investigator's presence at the hearing is to answer any questions from the parties about the process of the investigation and to identify sources of information. Questions about factual content, credibility or reliability of the report should not be addressed at this stage. The court investigator can be asked to identify sources of information that are otherwise not disclosed.

PRACTICE TIPS:

SHOULD YOU SUMMONS THE COURT INVESTIGATOR IN FOR THE STATUS CONFERENCE?

Counsel will need to carefully consider whether or not it advances their client's interest to have the court investigator attend the status hearing. Counsel must analyze the report carefully with an eye for deficiencies in the process. Did the court investigator fail to interview important collaterals or ignore witnesses proposed by one party? Did the investigator request an interpreter be present to interview a party or witness who is limited English proficient? In situations where

counsel wishes to challenge the investigator's process, cross examination at the hearing may serve to discredit the report in the eyes of the judge. Counsel may wish to ask the judge to require the investigator to take certain additional steps. Counsel may even ask the judge to vacate the appointment and appoint a new investigator. However, in other cases, a poor report may simply be discounted by the judge to the client's benefit, and steps to expand the investigation may be counterproductive.

Another consideration is whether counsel should request the court investigator to identify their sources. Unattributed hearsay statements in the Court Investigator's Report must be struck because the party is unable to cross examine the source of the information. See Adoption of Sean, 36 Mass. App. Ct. 261, 263-64 (1994). The new Rule leaves some unanswered questions. If the party challenging the unattributed hearsay fails to summons the court investigator to the status conference and ask about the sources, does that party waive any objection to the hearsay? Or can that party still raise these issues at trial? If the unattributed hearsay is favorable to your client, must you summons the court investigator in order to ensure that the statements remain in the report? Only time will tell how the Juvenile Court judges interpret the new Rule.

MAKING THE STATUS HEARING MEANINGFUL

The status hearing is an opportunity to raise issues with the judge that you have not been able to resolve directly with DCF or the other parties. Consider filing motions to address deficiencies regarding service and notice, discovery motions, Indian Child Welfare Act (ICWA) issues, the adequacy of DCF's plans, and "issues regarding services being offered or delivered to the family pending trial." This may include issues regarding the child's placement, as well as parent-child and sibling contact. Counsel might also wish to file motions regarding the child's educational placement and medical care. Motion practice is an important part of our advocacy. Of course, parties are not limited to filing these at this first status hearing. The court can also hear motions any time during the case in the interest of justice.

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Rule 15. Pretrial Conference in Care and Protection Cases

There are two significant changes to the Pretrial Conference Rule 15. First, the Rule eliminates the requirement that a pretrial conference be held within 120 days of the filing of the petition. Instead, the Rule provides only that the pretrial conference must be scheduled no later than thirty days before trial. Second, the written pretrial conference report has far fewer requirements. The only elements that must be submitted in writing are witness and exhibit lists. A full pretrial conference report may still be required by some judges in their discretion. The Rule further provides a long, but not necessarily exhaustive, list of things that should be addressed at the

conference. These items are similar to what was required in the old Rule, such as unaddressed motions and whether an interpreter is needed. The Note to Rule 15 also suggests that if the date to hear motions *in limine* has not already been scheduled, that should be marked up at the pretrial conference. Under G.L. c. 119, § 29D, DCF is also required to provide notice to the foster parents or pre-adoptive parents about certain hearings. DCF must report to the court how it plans to meet those notice requirements.

PRACTICE TIP:
DOES A PRETRIAL CONFERENCE THIRTY DAYS BEFORE TRIAL GIVE PARTIES ENOUGH TIME?

Rule 15 says that the pretrial conference should occur no later than thirty days before trial. One month is not a lot of time prior to the trial to address discovery or to receive notice of the evidence that will be presented. You can always ask the court to schedule the pretrial conference earlier in the case or to schedule more than one formal pretrial conference. Counsel should also consider filing motions for exhibit and witness lists or the disclosure of potential experts well before that thirty-day mark. Counsel should consider filing additional discovery motions well in advance of this hearing to prepare for what issues may need to be addressed at the conference.

Rule 16. Notice to Foster Parent, Pre-adoptive Parent or Relative Providing Care for a Child

DCF is now required to certify with the court that it has provided notice to the foster parents, pre-adoptive parents and relative caregivers about trial dates and 29B permanency hearings. New Rule 16 comports with G.L. c. 119, § 29D, requiring DCF to provide notice to these types of caregivers of their right to attend these hearings. Section 29D does not give substitute caregivers party status, but it does give them the right to be heard. However, if substitute caregivers wish to be heard, they must be under oath, and the usual rules of evidence apply.

Rule 17. Sanctions and Contempt

This Rule is identical to its prior version. Juvenile Court judges rarely sanction parties or attorneys, but this Rule provides they can do so under certain circumstances. They may order "reasonable costs and expenses" when a party or lawyer "delays the progress of litigation, wastes judicial resources or causes an unnecessary increase in expenses on a party." Parties and attorneys are entitled to a hearing prior to the sanctions being ordered, and the judge must make written findings. A judge can also find parties or attorneys in criminal or civil contempt.

Rule 18. Subpoenas

This Rule is identical to its prior version. Attorneys can issue subpoenas in compliance with Mass. R. Civ. P. 45.

Rule 19. Trial Judge's Order, Findings of Fact and Conclusions of Law and Notification by Clerk of Issuance of Findings of Fact and Conclusions of Law

Once the judge adjudicates a child in need of care and protection or terminates parental rights, that adjudication should be promptly docketed by the clerk. The clerk then must then notify all the attorneys or *pro se* litigants by mail or electronically. The clerk is also required to provide notice of the parties' right to appeal and the thirty day deadline to file the notice of appeal. When a judge must submit written findings and conclusions of law is governed by the time standards set out by the Chief Justice and are not described in new Rule 19. (Note new time standards also go into effect November 5, 2018.) But the clerk must immediately mail or transmit a copy of those findings to the attorneys or *pro se* litigant once they are submitted.

Rule 19(A) contains a significant change. It provides that after an order committing a child to the permanent custody of DCF, the court must hold a review hearing every 6 months until permanency is achieved. The Note explains that the purpose of the review hearing is to "assess progress toward permanency in keeping with the best practices for achieving legal permanency for children." It is different from the right of a review and redetermination under G.L. c. 119, § 26(c). The Note clarifies that "permanency" in the Rule means the child "is returned to his/her parents, is adopted, is placed with a third party custodian, a permanent guardian is appointed, or the child ages out of the system." A goal of another planned permanent living arrangement (APPLA) does not achieve legal permanency and children with this goal must continue to have review hearings every six months.

NEW TIME STANDARDS REQUIRE LEGAL PERMANENCY WITHIN 24 MONTHS

The new Time Standards for care and protection cases consistently track the new Rules and G.L. c. 119. But there is one notable addition. Although silent in the Rules, the new Time Standards require that a care and protection case reach "legal permanency" within twenty-four months after filing of the petition. Legal permanency is defined as in the Rules to include reunification, adoption, guardianship or permanent custody to a third party. It does not include children placed in permanent foster care with relatives nor any other "permanency goal" where the child remains in DCF custody (i.e., "APPLA").

Rule 20. Appeal

Any notice of appeal (called here a "claim of appeal") should be filed on the court form. This is provided by the clerk's office. Note that the thirty-day appeal deadline of G.L. c. 119, § 27 governs appeals of permanent custody adjudications, whereas the Rules of Appellate Procedure govern the timing of appeals of termination decrees. (This means that parties appealing termination decrees can ask the judge to extend the appeal period, whereas parties appealing a permanent custody decree are absolutely bound by the 30-day period in § 27.) In all cases, the appealing party (other than a child) must sign the notice of appeal, and the attorney cannot sign on the client's behalf. The attorney for the child *can* sign the notice of appeal on behalf of their child client.

Practice Tip: Parents and Children Aggrieved by any Part of the Judgment Should Promptly File a Notice of Appeal

As soon as a judgment is docketed, parties have thirty days to file a notice of appeal if they disagree with *any part* of the trial judge's decision, including custody, termination, choice/adequacy of plan, post-termination and post-adoption visitation, and sibling visitation. **The right to appeal is not limited to parents**. **Children must file their own notice of appeal if they wish to contest any decision made by the trial judge; they cannot "glom onto" a parent's appeal**. In addition to the notice of appeal, parties should file various motions to begin the appeal. These motions can be found here:

https://www.publiccounsel.net/cafl/professional/administrative-matters-and-forms/

Once the motion to appoint appellate counsel is allowed by the trial judge, trial attorneys are responsible for notifying CPCS so that appellate counsel can be appointed. To do this, simply complete the Appellate Assignment Intake Form found at the link above and send it to the CAFL Appellate Panel Support Unit.