

# CAFL NEWS

Volume 3, Issue 1

Winter 2019

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

Welcome back to the CAFL Newsletter! Spring is coming early this year according to Punxsutawney Phil, and the CAFL Newsletter is peeking up from the snow to bloom again. The CAFL Training Unit is excited to bring back the Newsletter after a brief hiatus, and to continue to bring you a Newsletter quarterly. We have a very busy training calendar this spring, and we will also continue to bring you the Friday Update and to add resources to the MyGideon website. We want to make sure to take the time necessary to give you the support you need to keep fighting for CAFL clients. We see how hard you work in challenging circumstances. We see your commitment to safeguarding the rights of poor families involved in the child welfare system. We want the CAFL Newsletter to support you, and to help you continue to do what you do so well. So let us know your ideas about articles, trainings, practice tips, and other items you would like to see by emailing the CAFL Newsletter Editorial Board at [cafltraining@publiccounsel.net](mailto:cafltraining@publiccounsel.net).

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## **February is Black History Month**

Black History Month honors the contributions of African Americans to U.S. History. Begin the celebration by checking out these quotes from 8 inspiring black leaders: <https://www.youtube.com/watch?v=0gg32ra-V-0>. Then read *Shattered Bonds: The Color of Child Welfare*, by Professor Dorothy Roberts about the disproportionate representation of black children in the foster care system and its effects on black communities and the country. In *Shattered Bonds*, Professor Roberts interweaves data with heart rendering stories of mothers battling the Chicago child welfare system for custody of their children. Or check out a 2016 article from the U.S. Children's Bureau on racial disproportionality in the child welfare system and read about what some states are doing to address the problem: [https://www.childwelfare.gov/pubpdfs/racial\\_disproportionality.pdf](https://www.childwelfare.gov/pubpdfs/racial_disproportionality.pdf). The CAFL Training Unit is exploring ways we can help attorneys to address bias and discrimination against their clients through development of training and written resources. If you have ideas to share, please email any one of us. We are: Amy Karp at [akarp@publiccounsel.net](mailto:akarp@publiccounsel.net); Katharine Klubock at [kklubock@publiccounsel.net](mailto:kklubock@publiccounsel.net); Elizabeth Broderick at [ebroderick@publiccounsel.net](mailto:ebroderick@publiccounsel.net); and Katy Krywonis at [kkrywonis@publiccounsel.net](mailto:kkrywonis@publiccounsel.net).

***“We must recognize the structural forces at work in the child welfare system. We must not forget the historical context of child welfare and the long-lasting impact it has had on poor communities of color. We must see the institutional racism in this system and work to undo it every day.”***

-Dinah Ortiz-Adames, “Uplifting Every Voice,” RISE Magazine, Issue #35, Winter 2019

## News and Announcements

### Has DCF Violated Your Client's Rights under the Americans with Disabilities Act?

#### The Department of Justice Wants to Hear from You!

It has now been four years since the federal Departments of Justice and Health and Human Services found DCF committed "extensive, ongoing violations" of the ADA and Section 504 of the Rehabilitation Act by discriminating against Sara Gordon [a pseudonym] on the basis of her disability. "DCF acted based on Ms. Gordon's disability as well as on DCF's discriminatory assumptions and stereotypes about her disability, without consideration of implementing appropriate family-based support services." The DOJ and HHS directed DCF to take remedial measures, including the development of procedures and training for staff to ensure future compliance with these laws. Yet we have seen little progress on this issue. The Civil Rights Unit of the U.S. Attorney's office in Boston is continuing its investigation of DCF. If you have a client who has been the victim of discrimination by DCF based on a disability and who wants to share their story with DOJ, please contact Special Assistant U.S. Attorney Gregory Dorchak at (617) 748-3157 or [Gregory.Dorchak@usdoj.gov](mailto:Gregory.Dorchak@usdoj.gov). Your client may also be interested in filing a complaint based on the discriminatory treatment. The process for filing a complaint with DOJ is described here ([https://www.ada.gov/filing\\_complaint.htm](https://www.ada.gov/filing_complaint.htm)); the HHS complaint process is described here (<https://www.hhs.gov/civil-rights/filing-a-complaint/complaint-process/index.html>). You can find the Sara Gordon Findings and a subsequent Technical Assistance Bulletin issued to all the states at [https://www.ada.gov/ma\\_docf\\_lof.pdf](https://www.ada.gov/ma_docf_lof.pdf) and [https://www.ada.gov/doj\\_hhs\\_ta/child\\_welfare\\_ta.pdf](https://www.ada.gov/doj_hhs_ta/child_welfare_ta.pdf).

### Come Join the CAFL Appellate Panel!

Now is a great time to broaden your CAFL practice! If you love to write and argue appeals, the CAFL Appellate Support Unit is now accepting applications for its three-day Appellate Panel Certification Training in Worcester on April 29-May 1. Applicants must have a demonstrated proficiency in legal research and writing and *at least one of the following*: two years of child welfare trial experience; primary authorship of two or more appellate briefs in other subjects; a recent judicial clerkship; substantial editing experience for a law journal; publication of a law journal article; or other substantial research and writing experience. For more information and to apply go to <https://www.publiccounsel.net/cafl/training/>. Applications are due on March 22, 2019, but will be accepted on a rolling basis until the training is filled.

### News on the Hill

Earlier in February, the Governor released his FY2020 Budget Recommendations. The Governor's Budget includes an outside section that would make statutory changes to G.L. c. 211D, CPCS's enabling statute. Outside section 53 would repeal the existing "intermediate" cap that precludes private counsel from accepting new cases once they have reached an intermediate limit of 1,350 hours. In addition, it expands the authority of the Chief Counsel of CPCS to waive the billable hours caps for overall billing (currently, that cap is 1,650 hours) from only child and family law cases and care and protection cases to all sorts of cases in all courts. The overall hours cap after a waiver would be 2,000 hours instead of the current 1,800 hours. The full budget proposal is available at: [https://budget.digital.mass.gov/bb/h1/fy20h1/os\\_20/hdefault.htm](https://budget.digital.mass.gov/bb/h1/fy20h1/os_20/hdefault.htm).

## Upcoming Trainings

### **Representing Children and Parents in Guardianship of Minor and Private Adoption Proceedings in the Probate and Family Court March 18, 2019, Holyoke Community College**

The March 18, 2019 Guardianship training will take place at Holyoke Community College; 303 Homestead Avenue, Holyoke MA 01040. CAFL will be presenting a one-day certification training for attorneys wishing to represent children and parents in guardianship of minor and contested adoption proceedings in the Probate and Family Court. The training is open to all CAFL attorneys in good standing on the care and protection trial panel who have graduated from the CAFL mentor program.

Read more details and register for the training here: <https://www.eventbrite.com/e/training-to-represent-children-and-parents-in-guardianship-of-minor-proceedings-in-the-probate-and-tickets-53656793915>

### **Immigration Issues for DCF Involved Children April 26, 2019, Worcester Law Library**

Changes to immigration law and practice are making it harder for children in DCF custody to obtain lawful status. In response to these challenges, DCF and CPCS/CAFL, with support from the SJC's Court Improvement Program, are repeating our day-long training on immigration issues for children involved in child welfare and guardianship cases. Topics include: an overview of immigration statuses, procedures for identifying children who may be in need of immigration advocacy, roles and responsibilities of DCF and CAFL attorneys in securing immigration relief for children, and the process for obtaining SIJ (special immigrant juvenile status) under the new administration. The training is free and open to CAFL social workers, and CAFL staff and private attorneys. The training is approved for 5 CAFL CLEs.

Read more details and register for the training here: <https://www.eventbrite.com/e/immigration-issues-for-dcf-involved-children-tickets-56939254844>.

### **Presenting and Challenging Expert Opinions June 18 & 19, 2019, Holyoke Community College**

Unfortunately the CAFL Expert training in Fall River in March is full. But we will be holding the program again in Holyoke on June 18 and 19, 2019. The two-day seminar is designed to provide tools and materials that will be helpful for both experienced and newer attorneys. This training is approved for 12 CLEs.

Read more details and register for the training by using the link below: <https://www.eventbrite.com/e/presenting-and-challenging-expert-opinions-tickets-56938535693>

**Save the Date for the CPCS Annual Conference at the DCU Worcester on May 14, 2019**

Keep an eye out for further details and a link to register shortly.

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

## Legal Updates: New Appellate Decisions, DCF Policies and Appellate Rules



### Recent Appellate Decisions

Case summaries are available on the CPCS website at: <https://www.publiccounsel.net/cafl/professional/relevant-statutes-and-case-law/summaries-of-recent-decisions/>.

Adoption of Ulrich, 94 Mass. App. Ct. 668 (2019) [[Full Opinion](#)] (stay of appeal to pursue new trial motion)  
This case is important for appellate attorneys because it establishes a new procedure for a single justice considering a motion to stay an appeal to pursue a new trial motion in the trial court. The Appeals Court held that a party who moves to stay an appeal to pursue a motion for new trial – based on ineffective assistance or other grounds – should provide enough evidence and argument to allow the single justice to assess whether the motion has a sufficient likelihood of success on the merits to justify delaying appellate review. Further, the single justice should balance the importance of a prompt resolution of the case with the merits of the motion, while recognizing that “too stingy a filter” could prolong final resolution even further if a postappeal new trial motion is allowed.

Commonwealth v. Salazar, 481 Mass. 105 (2018) [[Full Opinion](#)] (client testimony)  
This case is a good reminder that clients have the constitutional right to make fundamental decisions about their cases, like choosing to testify. In it, the SJC talks about the client’s decision to testify or not, and counsel’s role in that decision-making process.

Commonwealth v. Santos, 94 Mass. App. Ct. 558 (2018) [[Full Opinion](#)] (reckless endangerment by inadequate supervision)

This case is important to CAFL practice because it shows how courts should consider claims of inadequate supervision. It is the first reported decision to address the offense of reckless endangerment of a child by inadequate supervision. And it sounds *a lot* like the Church family from Trial Panel Certification training. The Appeals Court vacated the dismissal of a complaint charging the defendant mother with reckless endangerment of her three year old daughter. The Court held that once the mother discovered her child was missing, she had a duty to search for her. Evidence that she stopped searching and failed to enlist others to search established probable cause that she wantonly or recklessly failed to take reasonable steps to alleviate a substantial risk of serious bodily injury to the child.

Adoption of Luc, 94 Mass. App. Ct. 565 (2018) [[Full Opinion](#)] (hearsay in DCF records)

In this case, the Appeals Court concluded that hearsay is admissible in DCF reports, subject to the parent’s and child’s ability to subpoena the declarants, and “with opinion, evaluation, and judgment material edited out[.]” In reaching this conclusion, the Appeals Court relied on dicta in *Adoption of George*, 27 Mass. App. Ct. 265 (1989). *Luc* is inconsistent with the general rule in Massachusetts that hearsay is *not* admissible in official records, unless the statements themselves satisfy some other exception to the hearsay rule. See *Sklar v. Beth Israel Deaconess Med. Ctr.*, 59 Mass. App. Ct. 550, 556 n.8 (2003); *Kelly v. O’Neill*, 1 Mass. App. Ct. 313, 318-319 (1973). The mother in the case is seeking further appellate review. **If the SJC accepts the case for further appellate review, the Appeals Court’s decision does not take effect.** We will keep you posted on any developments in this important case.

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Guardianship of Kelvin, 94 Mass. App. Ct. 448 (2018) [[Full Opinion](#)] (burden of proof to remove guardian)

In this case, the Appeals Court (finally!) decided who bears the burden of proof on a petition to remove a guardian under G.L. c. 190B, § 5-212, and what standard of proof is necessary to satisfy this burden. Citing *Care and Protection of Erin*, 443 Mass. 567, 571 (2005), the Court concluded that the parent must make an initial showing of changed circumstances such that the child may no longer be in need of a guardian. Once the parent satisfies this initial “burden of production,” the guardian then bears the ultimate burden of proving by clear and convincing evidence that the parent is currently unfit and that continuation of the guardianship serves the child’s best interests. The Court reasoned that because the same liberty interests are at stake, the burden of proof in a petition to remove a guardian should be the same as in a petition for review and redetermination of a care and protection adjudication under G.L. c. 119, § 26(c). The Appeals Court reversed and remanded because the trial judge erroneously placed the burden on the mother to prove her current fitness.

### ICYMI: Amended DCF Policies

Since implementing its new [Family Assessment and Action Planning Policy](#) on February 6, 2017, DCF has made changes to several other policies. The amended policies are:

- Policy # 85-102: [Policy for Referrals to the District Attorney and Local Law Enforcement Authority](#) (rev. 2/6/2017)
- Policy # 86-007: [Case Closing Policy](#) (rev. 12/3/2017)
- Policy # 86-014: [Background Records Check Policy](#) (rev. 5/14/2018)
- Policy # 84-007: [SSI and RSDI Child Benefits Policy](#) (rev. 12/3/2018)
- Policy # 2016-002: [Children who are Missing or Absent Policy](#) (rev. 1/7/2019)

DCF also implemented changes to its Foster Care Review Policy in January 2019. You should have received an e-mail from Virginia Peel on January 23, 2019 notifying you of this. These changes include e-mailing you notice of reviews. **If you did not receive Virginia’s e-mail, you need to contact her ASAP to ensure that you receive notice of future reviews.** Virginia can be reached at [virginia.peel@state.ma.us](mailto:virginia.peel@state.ma.us). A copy of her e-mail, and the letter from DCF General Counsel Andrew Rome she references in it, are available on the CPCS website at: <https://www.publiccounsel.net/cafl/wp-content/uploads/sites/7/1-E-mail-from-Virginia-Peel-re-FCR-1-23-2019.pdf>. We also have posted the “Updated Foster Care Review Determination Questions” along with a one page summary of the new policy for volunteer foster care reviewers at: <https://www.publiccounsel.net/cafl/wp-content/uploads/sites/7/DCF-FCR-Determination-Questions-1-1-2019.pdf>

The written foster care review policy isn’t finished quite yet. But it’s really important that you understand what’s different before you go to a review. For example; DCF has eliminated ratings – full, partial, or insufficient – for task compliance. Instead, the review panel will determine whether each person “demonstrated the desired behavioral changes.” Virginia’s e-mail includes a link to four brief training videos about the new foster care

## Legal Updates con't



review process. You can watch them here: <https://www.youtube.com/playlist?list=PLF2PqsUUKpjh5I27AQmhd9Vh6UGCIHjzE>. Additionally, Carmen Andrews and Linda Silva in the Fall River CAFL office transcribed the third and fourth videos – “Participate in a Foster Care Review” and “Follow-Up on a Foster Care Review” – which explain how reviews are supposed to be conducted and DCF’s responsibilities following reviews, respectively. The transcripts are available on the CPCS website at: <https://www.publiccounsel.net/cafl/wp-content/uploads/sites/7/1-DCF-FCR-Training-Video-3-4-Transcript.pdf>. Thank you, Carmen and Linda!

Stay tuned; we will let you know when the new foster care review policy is available. We expect to see changes to other DCF policies in the coming months, and will keep you posted on those developments, too.

### **Amendments to the Mass. Rules of Appellate Procedure: What CAFL Trial and Appellate Attorneys Need to Know**

New Rules of Appellate Procedure go into effect on March 1, 2019. The amendments mostly impact appellate practice, but amendments to a few Rules – Rule 3: Appeal – how taken, Rule 4: Appeal – when taken, and Rule 8: The record on appeal – impact child welfare *trial* practice, too. Attorney Jaime Prince prepared a helpful summary of the amended Rules. You can find it here: <https://www.publiccounsel.net/cafl/wp-content/uploads/sites/7/CAFL-Summary-MA-Rules-of-App.-P.-3-1-2019.pdf>. The complete text of the amended Rules is available here: <https://www.mass.gov/law-library/massachusetts-rules-of-appellate-procedure>.

## Spotlight Service: Immigration Assistance



By Rachel Botelho, Esq.

Each edition of the CAFL newsletter will feature a service for our clients that we hope will be useful in your cases. If you know of a new, interesting, or effective service that could be highlighted in the newsletter, please contact CAFL staff attorney Rachel Botelho at [rbotelho@publiccounsel.net](mailto:rbotelho@publiccounsel.net).

CAFL attorneys work with a diverse population, which includes noncitizen clients. State intervention can be particularly scary and difficult for our clients with immigration issues and who may be at risk of detention and deportation. These clients may be wary of appearing in court and engaging with state agencies and other collaterals for fear of being reported to ICE. This wariness, and the risk of detention and deportation, can be barriers to reunification. Getting a client help with an immigration issue may be an important service for reunification, and we need to be able to help them identify resources to obtain lawful status. Therefore, it is important to know what to do if you have a client with immigration issues and where you can find help. Immigration issues affect our parent and child clients. The resources listed below are great for both parents and children.



## Spotlight Service con't

A great place to start when an immigration issue is identified is the CPCS Immigration Impact Unit. The IIU can provide information and assistance with referrals to local legal service providers. For contact information, practice advisories, and other resources, go to <https://www.publiccounsel.net/iiu/>.

If your client wants to pursue legal status, you can help by gathering some preliminary information from them. First, you should identify how the client arrived in the United States, and whether they had some legal status when they first arrived. Obtaining a copy of the client's immigration paperwork is important for this first step, as there are several ways that an individual can enter the United States. It will be important to have a copy of the paperwork to determine what steps should be taken next. Once you have the client's paperwork, you should consult with an immigration attorney and/or immigration specialist who can advise you and your client about what steps need to be taken next. Here is a list of information that will be requested when seeking legal advice: date of birth, country of birth, date of entry to the U.S., manner of entry (green card, temporary visa, cross border without documents, etc.), current immigration status, whether the person has ever been deported, and immigration status of family members.

If your client is a child, one important thing to note is that DCF contracts with an immigration attorney for children in their custody that have do not have a lawful status in the U.S.

If you have a client that is out of state, <https://www.immigrationlawhelp.org> has a list of legal resources searchable by zip code.

If the client does not wish to pursue lawful status, there are several other resources that you can provide your client to plan for their family in the event that they are detained by ICE. The Immigrant Legal Resource Center has many resources available on their site, including a pamphlet titled Know Your Rights and What Immigrant Families Should Do Now. It is available in several different languages. The Immigrant Legal Resource Center also has several other pamphlets detailing different issues and processes with immigration, including asylum, citizenship and naturalization, crimes, DACA, enforcement, family-based, immigrant youth, LGBT, visa, etc., which can be searched by topic. You can visit <https://www.ilrc.org/areas-of-expertise> to find these resources.

It is important to identify the issues early and use the resources to guide you in your practice. But it is most important to consult with an immigration attorney or other immigration specialist for assistance. An experienced immigration attorney can help identify available resources, and assess the benefits and risks of the client's options and the likelihood of their success. There are serious risks involved in applying for lawful status. Most notably, it will flag the client as an undocumented individual. If the client's petition is unsuccessful, they could be at risk for deportation.

Here is a comprehensive list of immigration legal services in Massachusetts with contact information for each provider. Try the ones in your practice area!

## Spotlight Service con't

### Immigration Legal Services Referral List

*For immigration assistance please contact the following providers  
Para asistencia de inmigración, por favor comunicarse con los siguientes proveedores  
Para assistência sobre imigração, favor contactar os seguintes provedores de serviços*

#### BOSTON

**Action for Boston Community Development, Inc.**

714 Parker St Roxbury, MA 02120 // 617-445-6000  
30 Bickford St Jamaica Plain, MA 02130 // 617-506-7917  
21 Meridian St East Boston, MA 02128 // 617-567-8857

**Agencia ALPHA**

62 Northampton St. Suite 203-204 Boston, MA 02118 // 617-541-4455 ext. 16

**American Civil Liberties Union - MA**

211 Congress Street, 3<sup>rd</sup> Fl. Boston, MA 02110 // 617-482-3170

**Asian American Civic Association**

87 Tyler St, 5th Floor, Boston, MA 02111 // 617-426-9492

**Asian Outreach Unit: Greater Boston Legal Services**

197 Friend Street Boston, MA 02114 // 617-371-1234

**Brazilian Women's Group**

697 Cambridge St, Ste 106, Brighton, MA 02135 // 617-202-5775

**Brazilian Workers Center**

14 Harvard Ave, Allston, MA 02134 // 617-783-8001 ext 107

**Catholic Charities of Boston**

275 W. Broadway, South Boston, MA 02127 // 617-482-5440

**Centro Presente**

12 Bennington St, Ste 202, Boston, MA 02128 // 857-256-2981

**Dominican Development Center**

42 Seaverns Ave, Jamaica Plain, MA 02130 // 617-524-4029

**East Boston Ecumenical Community Council**

50 Meridian St, East Boston, MA 02128 // 617-567-2750

**Greater Boston Legal Services**

197 Friend Street, Boston MA 02114 // 617-371-1234

**Irish International Immigrant Center**

One State St, Suite 800, Boston, MA 02109 // 617-542-7654

**Mayor's Office for Immigrant Advancement**

Boston City Hall, Suite 806, Boston, MA 02201 // 617-635-2980 (Consultations: 1<sup>st</sup> & 3<sup>rd</sup> Wednesday of the month, 12pm-2pm)

**Massachusetts Alliance of Portuguese Speakers**

697 Cambridge St, Brighton, MA 02135 // 617-787-0557  
1 Stoughton St, Dorchester, MA 02125 // 618-825-5897

**MA Immigrant and Refugee Advocacy Coalition**

105 Chauncy Street, Suite 901, Boston, MA 02111 // 617-350-5480 (Citizenship assistance only)

**Political Asylum/Immigration Representation Project**

98 N. Washington St, Boston, MA 02114 // 617-742-9296

**Project Citizenship (Citizenship assistance only)**

4 Faneuil S Market Bldg, 3<sup>rd</sup> Floor, Boston, MA 02109 // 617-694-5949

**Student Immigrant Movement (SIM)**

9A Hamilton Pl, Boston, MA 02108 // [info@simforum.com](mailto:info@simforum.com)

**Somali Development Center/African Social Service Agency**

205 Green St, Boston MA 02130 // 617-522-0700

**The GLBT Domestic Violence Attorney Program**

989 Commonwealth Ave, Boston, MA 02215 // 617-779-2130

**Victim Rights Law Center**

115 Broad St, Boston, MA 02110 // 617-399-6720 ext 19

**VACA: Vietnamese American Civic Association**

42 Charles St, Boston, MA 02122 // 617-288-7344

#### CHILDREN AND YOUTH ONLY

**Children's Law Center of Massachusetts**

298 Union Street, 2<sup>nd</sup> Floor, Lynn, MA 01901 // 781-581-1977

**KIND: Kids In Need of Defense**

155 Seaport Blvd, Boston, MA 02210 // 617-207-4138

#### CAMBRIDGE/SOMERVILLE

**Asian Outreach Unit: Greater Boston Legal Services**

60 Gore Street, Suite 203 Cambridge, MA 02141 // 617-603-2700

**Community Legal Services and Counseling Center**

47 Thorndike Street. Suite SB-LL-1. Cambridge, MA 02141 // 617-661-1010

**CPCS Immigration Impact Unit (post-conviction screening and Padilla advice only)**

21 McGrath Highway Somerville, MA 02143 // 617-482-6212

**Massachusetts Alliance of Portuguese Speakers**

1046 Cambridge St, Cambridge, MA 02139 // 617-864-7600  
92 Union Sq, Somerville, MA 02143 // 617-764-2091

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### UNIVERSITY LEGAL SERVICES

#### **Boston College Legal Services LAB**

(Newton, Waltham, Watertown) // 617-552-0248

#### **Harvard University Law School, Immigration and Refugee Clinic**

6 Everett St, Cambridge, MA 02138 // 617-384-8165

#### **Suffolk University Immigration Law Clinic**

(Chelsea residents only for non-detained, all MA residents for detained) // 617-573-8644

#### **University of Massachusetts, School of Law at Dartmouth, Immigration Law Clinic**

333 Faunce Corner Rd, N. Dartmouth, MA 02747 // 508-985-1174

### CHELSEA / EVERETT / MALDEN

#### **Action for Boston Community Development, Inc.**

11 Dartmouth Street, Malden, MA 02148 // 781-321-3431

#### **Chelsea Collaborative**

318 Broadway, Chelsea, MA 02150 // 617-889-6080

#### **Freedom Hill Community Church**

77 Kennedy Drive, Malden, MA 02148 // 781-480-4179

#### **HarborCOV**

148 Shawmut St, Chelsea, MA 02150 // 617-884-9799

#### **LUMA Boston**

198 Ferry St, Everett, MA 02149 // 617-381-0015

#### **Refugee Immigration Ministry**

6 Pleasant Street, Suite 612, Malden, MA 02148 // 781-322-1011

### LOWELL/LAWRENCE/LYNN

#### **International Institute of New England, Lowell Office**

15-17 Warren St, 2 Floor, Lowell, MA 01852 // 978-459-9031

#### **Lawrence Family Development & Education Fund, Inc. - Maria del Pilar Quintana Family Center**

400 Haverhill Street, Lawrence, MA // 978-794-5399

#### **Massachusetts Alliance of Portuguese Speakers**

11 Mill Street Lowell, MA 01852 // 978-970-1250

#### **Northeast Justice Center**

50 Island St, Ste 203B, Lawrence, MA 01840 // 781-599-7730  
181 Union St, Ste 201B, Lynn, MA, 01901 // 781-599-7730  
79 Merrimack St, Ste 302, Lowell, MA, 01852 // 781-599-7730

#### **Refugee and Immigrant Assistance Center, Inc.**

20 Wheeler St, Ste 401, Lynn, MA 01901 // 617-238-2430  
340 Main St, Suite 804 Worcester, MA 01608 // 508-756-7557  
31 Heath St., 3rd Floor Jamaica Plain, MA 02130 // 617-238-2430

### FRAMINGHAM/ WALTHAM

#### **Jewish Family Services of MetroWest**

475 Franklin St, Framingham, MA 01702 // 508-875-3100

#### **Massachusetts Alliance of Portuguese Speakers**

24 Union Avenue Suites 8 & 10 Framingham, MA 01702 // 508-872-2652

#### **MetroWest Legal Services**

63 Fountain St, Framingham, MA 01702 // 508-620-1830

#### **MetroWest Workers Center**

116 Concord St, Framingham, MA 01702 // 508-532-0575

### SOUTH SHORE/CAPE/ISLANDS

#### **Catholic Social Services of Fall River**

1600 Bay St, Fall River, MA 02724 // 508-674-4681

#### **Community Action Committee of Cape Cod & Islands**

372 North Street, Hyannis, MA 02601 // 508-771-1727

#### **Community Economic Development Center**

1285 Acushnet Ave, New Bedford, MA 02746 // 508-979-4684

#### **DOVE, Inc. (Domestic Violence Ended)**

PO Box 690267, Quincy, MA 02269 // 617-770-4065 x120

#### **Immigrants' Assistance Center, Inc.**

58 Crapo St, New Bedford, MA 02740 // 508-996-8113

#### **Justice Center of Southeast Massachusetts**

231 Main St, Ste 201, Brockton, MA 02301 // 508-586-2110

#### **South Coastal Counties Legal Services**

22 Bedford St., 1<sup>st</sup> Floor, Fall River, MA 02720 // 800-244-9023  
460 West Main Street, Hyannis, MA 02601 // 800-244-9023

### CENTRAL MASSACHUSETTS

#### **Ascentria Care Alliance**

11 Shattuck St, Worcester, MA 01605 // 774-243-3100

#### **Community Legal Aid/Central West Justice Center**

405 Main St, 4th Floor, Worcester, MA 01608 // 855-252-5342

#### **Refugee and Immigrant Assistance Center**

240 Main St, Ste 802, Worcester, MA 01608 // 617-238-2430

### WESTERN MASSACHUSETTS

#### **ACLU Immigrant Protection Project of Western Mass**

413-727-8515 // <http://www.ippwma.com/>

#### **Ascentria Care Alliance**

94 North Elm St, Ste 401, Westfield, MA 01085 // 413-787-0725

#### **Berkshire Immigrant Center**

67 East Street, Pittsfield, MA 01201 // 413-445-4881

#### **Catholic Charities, Springfield**

65 Elliot Street, Springfield, MA // 413-452-0626

#### **Center for New Americans**

42 Gothic St, Northampton MA 01060 // 413-587-0084

#### **Community Legal Aid/Central West Justice Center**

One Monarch Place, Springfield MA 01144 // 855-252-5342  
20 Hampton Ave, Ste 100, Northampton, MA 01060 // 413-584-4034

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## Book Reviews: Recommendations for Improving Your Legal Writing



What's on your bookshelf? Are you looking to add to your reference library? Here are three classics to guide you through a writing project –from the daunting first steps through to the final editing stage, with tips, suggestions and exercises to make your writing more clear and effective.

Plain English for Writers, Richard C. Wydick. According to Wydick, “We lawyers do not write in plain English. We use eight words to say what could be said in two. We use arcane phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to be cautious, we become verbose. Our sentences twist on, phrase within clause within clause, glazing the eyes of our readers.”

This concise yet entertaining guide contains tips to make your writing more straightforward and includes brief exercises at the end of each chapter so you can apply what you've learned.

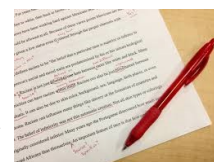
First published in 1920 Strunk and White's The Elements of Style was rated “one of the best and most influential books written in English since 1923” by Time Magazine In 2011, describing it as “. . . a timeless reminder of the simplicity of proper writing.” Instructive and witty, this slim volume is both fun to read and good to have on hand as a reference. It covers all the basics of the elementary rules of usage and composition including commas, clauses and paragraph construction and contains a list of 49 commonly misused words and expressions and a list of 57 often misspelled words. The 2018 edition has been updated to include two new chapters: *Basic Rules of Capitalization* and *Style Rules for Better Writing*.

The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts, Bryan A. Garner. Garner's tips cover organizing and planning a brief, writing effective reply briefs, persuasive use of authority, building sound paragraphs, and word choice. In the Third Edition, Garner makes his tips easy to apply through hundreds of new examples and a checklist for each tip.

Read any good books lately? Send suggestions for future book reviews to the CAFL Newsletter Editorial Board at [cafltraining@publiccounsel.net](mailto:cafltraining@publiccounsel.net).

## Writing Practice Tip: Receive a Daily Tip in Your Inbox from Renowned Legal Writer & Teacher Bryan Garner

Want to improve your legal writing but don't feel you have the time? Sign up for Bryan Garner's free “Usage Tip of the Day & LawProse Lessons” to receive short, practical advice to your inbox about everything from planning, organizing, usage, grammar and editing. Some tips, like “A Key to Revising Effectively” provide general advice for writers. Others are focused specifically on legal writing such as, “Judging Motions”. All are short, easy to read, understand and apply. To sign up go to: <http://content.bridgemailsystem.com/pms/vlanding/kzaqwKb26Cc17Jg20Nj21kvfire/>. If you have a little more time, check out the LawProse Blog, which archives tips going back a number of years: <https://www.lawprose.org/lawprose-blog/>.



## Wellness Corner

### WELCOME TO THE WELLNESS CORNER

Modern adults spend a substantial portion of their waking hours at work and the work of a CAFL attorney can easily become all-encompassing leading to high stress, poor dietary choices, physical inactivity, and loss of social connections. High rates of alcoholism, depression and a reluctance to seek help in the legal profession overall have been well documented.



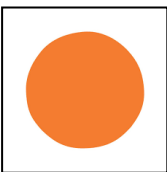
The American Bar Association in its Report of the National Task Force on Lawyer Well-Being notes “[t]o be a good lawyer, one has to be a healthy lawyer”. According to the World Health Organization health is not merely the absence of disease but “a state of complete physical, mental and social well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community.”

The ABA Report defines well-being as “a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others.” Further, the report notes, “[l]awyer well-being is part of a lawyer’s ethical duty of competence” which includes our ability to make healthy work/life decisions in order to provide the best representation to our clients. Healthy attorneys feel engaged at work, foster collegiality throughout the profession, continually seek intellectual growth, and take active steps to maintain their own physical and emotional health.

This column will offer tips and resources for CAFL practitioners in the 5 areas that typically comprise wellness: professional development, and emotional, financial, physical and social well-being.

Do you have any stress reducing practices you’d like to share? A favorite exercise class? Unusual hobby that provides a creative outlet? Volunteer or community activities? Share your suggestions for future articles with the CAFL Newsletter Editorial Board at [cafltraining@publiccounsel.net](mailto:cafltraining@publiccounsel.net).

### TRY HEADSPACE!



Are you reading this and thinking, “I don’t have time for well-being!” Here’s one quick thing you can do. Download the free mindfulness app “Headspace” on your phone. It offers 3, 5 and 10 minute meditation sessions that help calm your thoughts and emotions. Some prefer to do “Headspace” when they first wake up; others prefer to use it as a mid-day soother. Having trouble falling asleep? Try it just before bed.

## Legal Practice Tips



### Congratulations, Your Client is Turning 18! Now What?!

Since 2011, Massachusetts youth who turn 18, “sign on,” and stay in DCF continued responsibility have a right to a lawyer and to court oversight and jurisdiction of their case until age 22. Court oversight and jurisdiction requires continued permanency planning and regular permanency planning hearings. *See* M.G.L. c. 119 § 23(f) and 29B; Trial Court Rule VI. Continued right to counsel requires that attorneys for older youth zealously advocate for and represent young adult clients involved with DCF. This practice note provides a brief discussion of three aspects of representing young adults age 18 -22: advocating for young adults who wish to “sign on” at age 18; advocating for youth who leave DCF at any point from age 18 to age 22; and advocating for young adults who leave DCF any time between age 18 to 22 and wish to return to DCF.

#### 1. Advocating for youth who wish to “sign on” at age 18

Well before a youth in DCF custody turns 18, counsel should be actively engaged in planning for permanency for them. Counsel must be talking with the client about what they want and advising them the best way to achieve their goals. Counsel and the youth must discuss the services and supports the youth will continue to need, and the pros and cons of signing on with DCF. A plan to stay on should include provision of placement or housing, education or vocational training, and any other support or services particular to the young adult. *See* DCF Permanency Planning Policy, pp. 54-59. If the young adult decides to “sign on,” counsel should advocate with DCF to make that happen, and make sure that the young adult is involved in planning.

State law requires that DCF “shall” offer to continue responsibility for any young adult in its custody or care at age 18. M.G.L. c. 119, § 23(f). In order to continue in DCF responsibility the youth must sign a Voluntary Agreement (VA) with DCF, and must comply with the requirements of the VA. Counsel should work to make sure that the VA includes services and supports tailored to the young adult, and that the requirements are reasonable ones that the young adult can meet. Once the youth or young adult signs the VA, DCF will file what Massachusetts calls a PYA case, the trial court will retain jurisdiction of the case, will hold regular Permanency Planning Hearings and make reasonable efforts determinations. M.G.L. c. 119, § 29B(b); Trial Court Rule VI. Counsel should continue to advocate for the young adult, plan for permanency as the young adult gets older, and litigate as necessary at Permanency Planning Hearings to make sure they receive needed services and supports. Counsel should file motions in accordance with the client’s wishes and direction, including objections to the permanency plan, and should request more frequent PPH’s when needed.

#### 2. Advocating for Youth or Young Adults Who Leave DCF from age 18 – 22

Some clients walk away from DCF between age 18 and 22. DCF may not provide a VA that works for some clients and they leave or DCF discharges them. DCF must provide a transition plan for any young adult who decides to leave DCF or who DCF plans to discharge. A young adult between the age of 18 – 22 who leaves DCF, voluntarily or not, is entitled to transition planning and judicial review of a transition plan even

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if they are not yet due for a permanency hearing. *See* M.G.L. c. 119 § 29B(c); 42 U.S.C. 675(5)(H). Federal Law and the DCF Permanency Planning Policy require that 90 days before a young adult leaves DCF, DCF must provide a transition planning process and submit a transition plan for judicial review. *Id.*; DCF Permanency Planning Policy, pp. 57, 59. Trial Court Rule VI Rule 4(c)(1) – (8) sets out additional required information that DCF must provide. The transition plan must be personalized at the direction of the young adult and include specific options on services and supports. *See* Trial Court Rule VI, Rule 4(c). Counsel must be actively involved with developing the transition plan with the young adult and DCF, and advocate out of court and litigate in court as needed. State law requires that the judge hold a hearing on the transition plan, and shall determine whether the proposed transition plan is satisfactory and **shall** retain jurisdiction of the matter until he or she finds that a satisfactory transition plan has been provided (emphasis added). *See* M.G.L. c. 119 § 29B(c); Trial Court Rule VI Rule 3(c). Counsel must advocate accordingly; seek judicial review and orders, and ask the court to retain jurisdiction and oversight until the transition plan is satisfactory.

### 3. Advocating for Young Adults who Want to Return to DCF from age 18 - 22

As stated above, DCF is required to offer to continue responsibility for any young adult who was in their custody at age 18. That means that DCF is required to make this offer to any young adult who leaves and wishes to come back before age 22. DCF must also offer services to a young adult who signs on, leaves, and then wishes to come back before turning 22. DCF must work with the young adult to develop a Voluntary Agreement, and the young adult must sign the VA and abide by it. *See* DCF Permanency Planning Policy, pg. 62. The young adult has a right to counsel. If the client walks away from DCF, counsel must tell them that they can try to come back to DCF if they change their mind and need support and services. Counsel should give their business card and contact information to the client, tell them to call if they want to come back, and that counsel will help them negotiate with DCF to develop a VA. CAFL/CPCS will pay CAFL lawyers to advocate for the client with DCF, even before they sign a VA and a PYA case is filed in court. Counsel should contact the CAFL Trial Support Unit to re-open a NAC.

**PLEASE NOTE:** There are administrative internal DCF and in-court processes to challenge DCF decisions around continuing to offer services and supports to young adults. This practice note does not address how to challenge DCF decision making for young adults. Practitioners have had success using the Fair Hearing Process to challenge DCF decisions to terminate services, placement, and/or to discharge a young adult. Counsel should Review the Permanency Planning Policy, at pp. 61- 62, Rule VI Rule 9 and Rule 10, 110 CMR 10.6 and 10.06, and contact the CAFL Trial Support Unit with questions about how to challenge such DCF decisions.



## SOCIAL WORKER FAQ: HOW CAN PARENTS' ATTORNEYS HELP THEIR CLIENTS HAVE QUALITY PARENTING TIME?

By Meg Grant, CAFL Social Work Coordinator

When a child is placed out of the home, preserving a child's relationship with their parents is not just about the quantity of visits, but also the quality of the time families spend together. We want to afford every parent the opportunity to build on their strengths and move forward during the difficult time when the state is involved with their family.

Research suggests that consistent and frequent visitation between parents and their children in out-of-home placements can reduce trauma for children, and can be critical to strengthening and maintaining family relationships.<sup>1,2,3</sup> "It is also linked to positive outcomes, including improved child well-being, less time in out-of-home care, and faster reunification."<sup>4</sup> See <https://partnersforourchildren.org/sites/default/files/POCFamilyVisitationBrief%20FINAL.pdf>.

While increased parenting time may be the first thing an attorney seeks on behalf of their client; the quality of the time should not be overlooked. Research suggests that while visits are necessary for parents to maintain their relationship with and regain custody of their children after they are placed in foster care, they can be a stressful experience for both the child and parent. Children are likely struggling with many feelings including being frightened or angry and they may even act out (even when they want to see their parents). Additionally, many of the issues that brought a family into the child welfare system remain present including substance use and mental health challenges. Parents may feel defensive and discouraged and "without meaningful support, this is hardly a scenario conducive to effective parenting or supporting the wellbeing of children. Research shows that effective visitation is more than just having one-on-one contact with your child; using these visits to build parental skills is important."<sup>5</sup> Research suggests that pairing visitation with a supportive parenting program is an effective way to increase reunification."<sup>6</sup> See also <https://partnersforourchildren.org/sites/default/files/POCFamilyVisitationBrief%20FINAL.pdf>.

So what can you do to focus on the quality of the parenting time? When I used to meet with parents, I would always ask them, "What makes you a good mom/dad?" I wanted to start by looking at their strengths. The Department has already outlined all of their "faults" and sometimes having someone recognize their positive parenting skills can get them started on the right footing. Here are some other helpful tips to support positive parenting time that you can review and discuss with your parent clients:

- Encourage them to have a positive attitude and stay calm. You can remind them that they may be upset by things they hear from the social worker, but staying calm will help their case. You can even role play scenarios that may come up and give them language like "I will talk with my attorney and let you know."
- Remind them to bring toys/books/games/snacks/diapers that support positive interactions. Give them examples. Some of our parent clients may not have had someone do this for them, so they may need a little guidance.

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- Review the expectations with the client including confirming the parenting time and being on time. You may need to do this more than once.
- Encourage the parent to focus on the relationship and leave distractions, including phones, outside. Also, remind your client this is not the time to argue about the case with the social worker.
- Provide your client with a little notebook and encourage them to jot down notes or questions (after the parenting time is over) that they can review with you at a later time. (They could also set up an email account and send you - and themselves - notes about the parenting time).
- Your parent client may also do well developing a routine for their parenting time: special hello, snack, game, reading, special good-bye. When there is a regular rhythm to the interaction it can reduce stress for both the parent and child.

Additionally, if the client has a good relationship with their DCF social worker, you may be able to negotiate “de-briefing” time after the visit. You could also request a parent aid to participate in the visits if you believe that would help your client reach their legal goals. Another path you could consider is hiring your own social worker to observe visits and provide consultation regarding opportunities for improvement after the visit has concluded.

For more information about how to talk with your client about successful parenting time as well as tip sheets, you can visit:

<http://www.risemagazine.org/?s=visits>

### Legal Advocacy Also Can Help Promote Quality Parenting Time

Of course, there are many obstacles to quality parenting time, such as: scheduling conflicts; lack of transportation; children placed far from home; unreasonable conditions; contact that is too infrequent to develop or maintain bonds; not to mention small, unpleasant spaces. Helping your client have successful parenting time includes addressing these challenges with DCF and the courts. Be creative. Advocate for more frequent contact (including phone calls, skype, and letters), unsupervised contact, parenting time in the community, or allowing relatives or others to supervise when that is needed. DCF should provide parents with disabilities with needed accommodations such as parenting aides or transportation. CAFL would love to collect your parenting time motions (properly redacted of course) to share with our bar via MyGideon. So send them to us at [cafltraining@publiccounsel.net](mailto:cafltraining@publiccounsel.net).

1 Smariga, M. Visitation with infants and toddlers in foster care: What judges and attorneys need to know. American Bar Association. 2007. Retrieved from [http://www.ct.gov/ccpa/lib/ccpa/birth\\_to\\_three\\_and\\_visitation\\_aba\\_child\\_law\\_center\\_doc.pdf](http://www.ct.gov/ccpa/lib/ccpa/birth_to_three_and_visitation_aba_child_law_center_doc.pdf)

2 Mallon, G. P. & Hess, P. Visits: Critical to the well being and permanency of children and youth in care. In Hess, P. and Mallon, G. (Eds.), *Child welfare for the twenty-first century: A handbook of practices, policies and programs*, pp. 548-557. New York: Columbia University Press. 2005.

3 Haight, W. L., Kagle, J., & Black, J. Understanding and supporting parent-child relationships during foster care visits: Attachment theory and research. *Social Work*, 48, 195- 207. 2003.

4 Mallon & Hess, 2005; Hess, 2003.

5 Hagt, Sokolec, Budde, & Poertner, 2001. 14 Barth, R. P., Landsverk, J., Chamberlain, P., Reid, J. B.,

6 Rolls, J. A., Hurlburst, M. S., Farmer, E. M. Z. , Kohl, P. L. (2005). Parent-training programs in child welfare services: Planning for a more evidence-based approach to serving biological parents. *Social Work Practice*, 15(5), 353-371.