

CAFL NEWS

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



With the coming of spring, we welcome in warmer weather and longer days, after what seemed like a very long winter. The CAFL Training Unit would also like to extend a warm welcome to the many attorneys who recently completed the CAFL Trial and Appellate Panel Certification trainings. We are happy to have you join the many dedicated CAFL attorneys and social workers working tirelessly on behalf of their clients. Thank you also to the many volunteers who helped make the training programs a success. We could not do it without our faculty's generous commitment of time and support.

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A Pathway to Better Outcomes for Clients **By Michael Dsida, Deputy Chief Counsel**

What specific safety issue prevents this child from being returned home today?

Last fall, Chief Justice Nechtem presented this question and four others as “Essential Questions” – questions that should be asked in every hearing in every care and protection case. Recently, she added a sixth Essential Question:

What measures have been taken to prevent the placement of the child in foster care or to decrease the child's time in foster care?

These two questions are indeed essential. After all (and as we all know), pretrial removal is never warranted unless it is necessary to protect the child from serious abuse or neglect or the immediate danger of serious abuse or neglect. Likewise, the state should never seek to remove a child unless it has made reasonable efforts to keep the family together, and, when removal occurs, it needs to make reasonable efforts to reunify the family. (See pages 2 and 3 for further discussion regarding the Juvenile Court's Essential Questions and a copy of the now Six Questions.)

As we noted in a *Friday Update* in November, the Essential Questions are designed to ensure that the court process is focused on achieving timely permanency for children, including through family preservation and prompt family reunification. This focus on permanency is also at the core of the Juvenile Court's new “Pathways” initiative. As we mentioned in a more recent *Friday Update*, the overall goal of this new program is “to ensure fair, just and timely case resolution” of state intervention cases.”

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A Pathway to Better Outcomes for Clients (continued from page 1)

Though implementation (which is in its early stages) will vary from county to county, the Pathways model has several key objectives, including two that relate directly to the Essential Questions regarding safety and family preservation and reunification:

- Providing parents “a clear picture of the path ahead and what’s necessary for their children to return home.”
- Enabling children who can safely return home to do so sooner, thus reducing their trauma and reducing foster care demand.

Unfortunately, for many years, in far too many cases, neither DCF nor the court have provided parents clear instructions regarding what is needed for their families to be reunified. Amorphous “issues” or “concerns” sometimes take precedence over questions regarding the child’s safety. In addition, DCF’s efforts (or lack of efforts) to reunify families have not consistently received sufficient attention and oversight from the court. As a result, children have not been returned home as quickly as they should have been, prolonging and exacerbating the trauma they have undergone.

Regardless of how Pathways is implemented in your county, CAFL lawyers can play a key role in ensuring that children do not languish in foster care. The Essential Questions regarding safety and family preservation/reunification, having been endorsed by Chief Justice Nechem, can be a useful tool for lawyers to help facilitate reunification when that is your client’s objective. Whether at a temporary custody hearing, a status hearing, or a trial, asking about *specific* safety issues and about the Department’s efforts to preserve or reunite the family (including its effort to make more services available to families who need them) can help you cut through feeble justifications for preserving the status quo and provide a pathway for more timely reunification for parents and children.

We are hopeful that the Pathways Initiative, along with consistent use of the “Essential Questions,” will provide children a clearer and quicker path home. Please let us know if there is anything that we can do to support your work on this front.

Juvenile Court’s Five Essential Questions Now Six



Last October, the Administrative Office of the Juvenile Court issued a single page document, entitled “*Essential Questions to Promote Permanency*” to all of the Juvenile Court Judges state-wide. The questions are intended to be discussed at every hearing to focus the court process on achieving timely permanency for children. Recently, the Juvenile Court added a sixth question: “*What measures have been taken to prevent the placement of the child in foster care or to decrease the child’s time in foster care?*” This question is an obvious reference to the requirement that DCF make reasonable efforts to prevent removal and to reunify the family. When reunification is not possible, DCF must make reasonable efforts to place the child with another permanent family. Judges should be asking about reasonable efforts at every hearing. A copy of the expanded *Essential Questions* can be found on the next page.



Essential Questions to Ask at Each Hearing to Promote Permanency

- 1. What measures have been taken to prevent the placement of the child/children in foster care or to decrease the child/children's time in foster care?*
- 2. What are the specific safety issues preventing the child/children from being returned home today?*
- 3. What is the collaboratively developed plan to return the child/children safely home?*
- 4. What efforts has the Department undertaken to place the child/children with a fit and willing relative?*
- 5. How are the Department, parents and others supporting stability (placement, school and otherwise) for the child/children?*
- 6. What other efforts must be made to support the child/children and promote timely permanency in the event that the safety issues cannot be ameliorated?*

Legal Updates: New Appellate Decisions and DCF Policies



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/>.

Ruth Adjartey & Others v. Central Division of the Housing Court Department & Others, 481 Mass. 830 (2019) [[Full Opinion](#)] (reasonable accommodations; indigency determinations)

This decision is notable because it provides guidance on the obligation of Massachusetts courts to provide reasonable accommodations for parties with disabilities. The Court stated that its previous holding that Massachusetts courts have a duty to “make reasonable accommodations for witnesses with disabilities who require accommodations in order to testify in a criminal trial,” should not be limited to criminal cases. *See McDonough, petitioner*, 457 Mass. 512, 520 n. 19, 528 (2010). The SJC stated that it sees “no reason to limit these aspects of the *McDonough* holding to witnesses or to criminal trials.” The Court reiterated that a judge should accompany their decision concerning accommodations with findings.

This decision also discusses the process by which a court determines whether an applicant is indigent and entitled to a waiver of “normal fees and costs,” and/or “extra fees and costs.” It outlines what is generally found to be a “normal” or “extra” fee and cost, and what the court must decide when determining whether to waive a fee. The SJC also “urges” judges to be mindful of the confidential nature of affidavits of indigency and of any hearing on the issue.

Adoption of Chad, 94 Mass. App. Ct. 828 (2019) [[Full Opinion](#)] (ability to meet special needs; best interests determination)

In this case, the Appeals Court vacated a TPR judgment and remanded the case to the trial court for further findings. The trial judge had found that the mother -- who had some possible cognitive delays, diagnosed depression, and other medical challenges -- was incapable of meeting her children’s significant special needs. But the Appeals Court held that this was insufficient to support a finding of unfitness. “[W]hile it is undisputed that the mother could not address the children’s special needs on her own, it is also undisputed that their special needs could not be managed by other individuals either.” One child was in a therapeutic residential placement and the other was in intensive foster care. The question the trial judge should have answered is “whether, with available assistance, the mother would be able to leverage the outside support that both children plainly need.” The Appeals Court further held that, even assuming the mother was unfit to care for the children, the trial judge failed to separately address how termination serves the children’s best interests, particularly where they were clearly bonded to their mother and neither child was “well-situated for adoption or other stable, long-term placements.” “Although we agree with the judge that serious issues regarding the mother’s fitness have been raised, we nevertheless conclude that various shortcomings in the proceedings necessitate that the matter be remanded.”

Adoption of Querida, 94 Mass. App. Ct. 771 (2019) [[Full Opinion](#)] (judicial bias)

This case is a good reminder of the due process right to an impartial judge. In this appeal from decrees terminating her parental rights, the mother argued that the trial judge was biased based on statements he

Legal Updates con't



made during the proceedings about her behavior in court. The Appeals Court concluded that the judge's observations of the mother during the proceedings did not disqualify him from adjudicating the matter. The judge's orders and comments were appropriately based on impressions he formed from his role in the case, not from extrajudicial sources, and his findings and conclusions were amply supported by the record. The Appeals Court affirmed the decrees.

Adoption of Posy, 94 Mass. App. Ct. 748 (2019) [[Full Opinion](#)] (unavailability due to deportation)

This case highlights the special challenges faced by non-citizen clients and their families. The father and mother were Guatemalan citizens and the father had been deported. At trial, the father sought custody of his two daughters who were placed in DCF custody after their mother died. The father appealed from decrees terminating his parental rights. The father argued that the trial judge's findings did not have adequate support in the record, including a finding that he had abandoned the children. The Appeals Court agreed and vacated the termination decrees.

SJC Takes Adoption of Luc on FAR

In Adoption of Luc, 94 Mass. App. Ct. 565 (2018) [[Full Opinion](#)], 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 SJC accepted the mother's application for further appellate review, so the Appeals Court's decision does not take effect.** We anticipate that the SJC will resolve, once and for all, the issue of admissibility of hearsay in DCF records. We will keep you posted on developments in this important case.

DCF Releases New Foster Care Review Policy

DCF implemented changes to its Foster Care Review Policy in January 2019, and (finally!) released the new written policy, effective March 4, 2019. Current DCF policies, including this one, are available here: <https://www.mass.gov/lists/review-dcf-policies>.

We are working on a summary of the new Foster Care Review Policy. In the meantime, you can find "Updated Foster Care Review Determination Questions" and a one page policy summary for volunteer foster care reviewers here: <https://www.publiccounsel.net/cafl/wp-content/uploads/sites/7/DCF-FCR-Determination-Questions-1-1-2019.pdf>; four brief DCF training videos about the new review process here: <https://www.youtube.com/playlist?list=PLF2PqsUUKpjh5I27AQmhd9Vh6UGCIHjzE>; and transcripts of 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, here: <https://www.publiccounsel.net/cafl/wp-content/uploads/sites/7/1-DCF-FCR-Training-Video-3-4-Transcript.pdf>.

We expect to see changes to other DCF policies in the coming months, and will keep you posted on those developments, too.

Notices and Announcements

Congratulations Carol Rosensweig & Other CPCS Annual Awards Winners

Attorney Carol Rosensweig was this year's recipient of the Margaret Winchester Child Welfare Advocacy Award. She, along with this year's other honorees, received their awards at the April 24th ceremony held at the John Adams Courthouse in Boston. Carol has dedicated her career to CAFL work. After spending many years in private practice, she was hired as the first Attorney-in-Charge of the Brockton Trial Office. For over a decade she has served as the Director of the Trial Panel Support Unit. Carol has been unrelenting in her support for clients represented by private attorneys – sometimes steering attorneys to focus on the practical, sometimes supporting their creativity, but always encouraging attorneys to remain zealous in courtrooms where zeal is not always welcome. Carol has never lost sight of the challenges that private attorneys confront and has worked tirelessly to help them address those challenges. In 1996, Carol co-authored *Kids and the Law: A User's Guide to the Juvenile Court*, an easily-accessible guide to navigating the child welfare system.

Carol Rosensweig deserves recognition as an indispensable resource for parents and children who are the subject of state intervention cases in the Juvenile Court and for all of the private attorneys who represent them. Congratulations on being this year's Margaret Winchester award winner. Congratulations, also, to the other 2019 CPCS annual award winners who are listed here.

Thurgood Marshall Award

Don Bronstein

Edward J. Duggan Private Counsel Award for Outstanding Service

Lois Martin

Jane Addams Award for Outstanding Social Service Accomplishments

Kelsey Haggett

Maura Mellen Administrative Professional Award

Sarah Pegus

Edward J. Duggan Public Counsel Award for Outstanding Service

Yolanda Acevedo

Jay D. Blitzman Award for Youth Advocacy

Robert Hennessy & Merritt Schnipper

Paul J. Liacos Mental Health Advocacy Award

Debra Kornbluh

Carol A. Donovan Award for Exceptional Advocacy

Kate Frame

Teresa McParland Award for Operational Excellence

Karin Doss

Maria Souto-Armand Goyette Investigator Award

Ami Rose Jackson



Services of the Month

Children's Behavioral Health Initiative (a.k.a. "Rosie D." services)

Federal law requires that all children enrolled in MassHealth, the Massachusetts Medicaid program, receive any necessary health care, diagnostic services, treatment, and other measures to correct or ameliorate physical and mental illnesses and conditions. If a licensed clinician finds that a particular service is medically necessary to help a child improve their functional level, MassHealth must pay for the service. The services must be provided promptly and for as long as medically necessary.

Obtaining timely and appropriate evaluation and treatment can be a challenge though. In *Rosie D. v. Romney*, 410 F. Supp. 2d 18 (D. Mass 2006), the Federal District Court of Massachusetts held that Massachusetts violated the federal Medicaid Act by failing to provide home-based services to thousands of children across the state experiencing serious emotional disturbances. The court adopted a remedial plan to ensure that medically necessary home-based services are provided to eligible children so that they can remain in their homes, schools, and communities whenever possible. To learn more about the Rosie D. litigation, go to www.rosied.org.

Massachusetts created the Children's Behavioral Health Initiative ("CBHI") to implement the remedial plan. CBHI is designed to provide more home- and community-based behavioral and mental health services to youth up to age 21 who have MassHealth and who are experiencing mental health, behavioral, emotional, or substance use issues. The services support the youth's family, too. CBHI services include intensive care coordination, outpatient therapy, in-home therapy, in-home behavioral services, therapeutic mentoring, family support and training (family partners), and mobile crisis intervention. They are provided by community service agencies, community organizations, hospitals and community health centers, individual providers, and mobile crisis teams. To access CBHI services: (1) the child enrolls in MassHealth; (2) the child is referred for evaluation/services; (3) the provider determines what services are appropriate and necessary; and (4) services are implemented. All children in DCF custody are enrolled in Mass Health.

You can find more information about CBHI, including how to apply for health coverage, the assessment process, service brochures, and more at <https://www.mass.gov/masshealth-childrens-behavioral-health-initiative>. To search for available providers, go to www.mabhaccess.com.

The Children's Law Center of Massachusetts and the Center for Public Representation developed a quick reference guide on CBHI services. You can find it at http://www.clcm.org/ROSIE_D_GUIDE_FINAL_2013.pdf.

Another helpful resource is "The Parents' How-to Guide to Children's Mental Health Services in Massachusetts," published by the Boston Bar Association. You can find it at http://www.bostonbar.org/docs/default-document-library/bbaguide_2011update_2.pdf



Book Reviews



Recommendations for Summer Reading

Fiction:

The Good Mother by Sue Miller

An acclaimed novel by a local Massachusetts author about a woman fighting for custody of her daughter in the Probate & Family Court. This book really shows how bewildering and scary the legal system can be from the perspective of a parent

Pigs in Heaven by Barbara Kingsolver

The story of a young woman raising a Native American child and finding herself caught up in a legal battle. A detailed and nuanced take on an ICWA-focused case. This novel is the sequel to The Bean Trees, but can be read without it.

The Trial by Franz Kafka

The unfortunate Josef K could easily be one of our clients. No book better illustrates the feeling of being swept away in a confusing and contradictory legal system, in which nothing makes sense and nothing is explained to you. This book is a classic for a reason. I recommend the Breon Mitchell translation.

Room by Emma Donohue

Told entirely from the perspective of a five-year-old boy, this novel is a harrowing account of a woman held captive for years in a single room-- along with her son who has never seen the outside world. Emma Donohue gets inside the head of a traumatized child with great skill. You are missing out if you've only seen the movie!

Unraveling by Elizabeth Graver

Another Massachusetts author tells the story of a Lowell Mill Girl in the late 1800s. Hauntingly written, carefully researched, and makes you think about the historical roots of many of the injustices we see today.

Nonfiction:

What's Wrong with Children's Rights, by Martin Guggenheim

A series of essays on many of the legal and ideological problems in the field, by a highly respected practitioner and scholar.

Theatre Tips and Strategies for Jury Trials, by David Ball

An entertaining and thoughtful guide to using your courtroom demeanor and presentation to further your client's case. Despite the title, it's helpful for bench trials too!

Narratology, by Mieke Bal

The ultimate guide to narrative theory. In this groundbreaking work, Bal shows how even "factual" sentences are shaped by the worldview of the person telling the story. You will never look at stories – or 51B reports, or closing arguments -- the same way again.

Book Reviews con't

Iphigenia in Forest Hills, Janet Malcolm

A real-life account of a New York murder trial with a child welfare component. Malcolm's uncompromising and clear-eyed narrative lays bare the deficiencies of the court system. This one is an easy and suspenseful read that can be finished in a day!

Punished By Rewards, by Alfie Kohn

An intriguing argument against the incentive plans, behavioral levels, and sticker charts of which we've all heard so much, this book argues that kids are motivated better by intrinsic rewards than by artificial reward and punishment structures

Writing Practice Tip: be concise and avoid jargon

Most lawyers have fallen prey to the temptation to over-stuff a sentence with as many adjectives, adverbs and jargon-filled terms-of-art as possible. Imagine the relief of a judge who encounters a short sentence that says what it means.

For example, instead of "Mother was compliant with DCF's action plan task of regularly engaging in therapy or counseling to deal with the issues which arose in this Care and Protection proceeding," try "DCF asked Ms. ___ to attend therapy. She did."

Sometimes you will need to add more details in order to be more precise, which can help your argument. For example, instead of "The issue arose that transportation concerns prevented Mother from regularly attending supervised visitation," try "Ms. ___ does not have a car. Cab fare to the DCF office from Ms. ___'s home costs \$20. It would cost Ms. ___ \$80 a month to take a cab to every weekly visit. She cannot afford that money."

You can elaborate with additional sentences, if you have more information to add. You can also include citations to support your statements. But you do not have to fit all of that information into one sentence. If each word is necessary to convey your meaning then your writing will be powerful and convincing.



Welcome to the Wellness Corner



“I think I cannot preserve my health and spirits, unless I spend four hours a day at least - and it is commonly more than that - sauntering through the woods and over the hills and fields, absolutely free from all worldly engagements.”

Henry David Thoreau, Walking

According to a survey conducted by the US Environmental Protection Agency, the average American spends 87% of their time in enclosed buildings and 6% of their time in enclosed vehicles. Research has shown that exposure to nature can provide a wide range of mental health benefits impacting attention and cognition, memory, stress and anxiety, sleep, emotional stability, and self-perceived welfare or quality of life. The term *Shinrin-yoku*, or “forest bathing” in English, was first coined by the Japanese Ministry of Agriculture, Forestry and Fisheries in 1982. Forest bathing is the practice of spending time in nature in a relaxed way while engaging all of the senses. It is often a component of healing and preventative health care in Japan. The results of clinical studies performed on the physiological effects of *Shinrin-yoku* show that time spent in forest environments can lower concentrations of the stress hormone cortisol, lower pulse rates, lower blood pressure, increase parasympathetic nerve activity, and lead to an increase in positive emotions.

What if you don't have four hours a day to spend sauntering like Thoreau? Nature is closer than you think! With long summer days ahead of us stepping outside for a few moments, even on a work day, is doable. There are many resources available to help find a bit of nature on your way home from work or even during lunch. You can search for trails in almost every town in Massachusetts on <http://www.masstrails.com/> which has also has a listing of accessible sites and a map for each trail.

- For the Top 10 Hiking and Walking trails near Boston check out <https://www.planetware.com/massachusetts/top-hiking-and-walking-trails-near-boston-us-ma-12.htm>.
- In central Mass <https://www.discovercentralma.org/articles/hiking-central-massachusetts> has a list of trails including the Broad Meadow Brook Wildlife Area which features 5 miles of trails, 80 butterfly species, 164 bird species and 700 plant species, all within Worcester city limits!
- For Western Mass practitioners, the Connecticut River Walk and Bikeway includes a 3.7 mile stretch along the Springfield riverfront and the 11,000 acre Pittsfield State Forest offers 30 miles of trails.
- Looking for a longer adventure? The 230 mile Bay Circuit Trail connects 37 towns in eastern Massachusetts from Plum Island in Newburyport to Kingston Bay in Duxbury. Many sections of the trail are accessible by public transportation. For Bay Circuit Trail maps and more information go to www.baycircuit.org.

More information on *Shinrin-yoku*, including a list of local practitioners, can be found at <https://www.natureandforesttherapy.org>.

So next time you are leaving court turn off the phone and look for a place to engage your senses - listen to the birds, feel the breeze on your skin and smell the damp soil and vegetation. Even a few moments in nature can have beneficial health effects.

Legal Practice Tips: Appealing Trial Court Decisions (FAQ)

CAFL trial lawyers often have questions about how and when to appeal a judge's decision that goes against their client. Some wonder how to best preserve their client's rights and whether and how to go forward with an appeal. The CAFL Appellate Support Unit put together a helpful FAQ to address some of the questions that may arise about appeals.

What can you appeal? And does the appeal have to have merit?

A. Final judgments. Clients can appeal when they lose any aspect of a trial (permanent custody, termination, or guardianship), a review and redetermination hearing, or a permanency hearing. They can appeal the whole decision or just part. For example, a child client might appeal the judge's termination of the mother's parental rights, the judge's refusal to order post-adoption contact, *and* the judge's refusal to order sibling visitation. Or the child might appeal only the absence of – or the unwanted entry of – a post-adoption contact order. Parents and children have a *right* to appeal any aspect of a final judgment. The appeal does not have to have merit, and it is not limited to any particular types of issues.

B. Interlocutory orders (single justice petitions). Clients can also file a single justice petition in the Appeals Court under G.L. c. 231, § 118 if they disagree with the judge's ruling after a 72-hour/temporary custody hearing or the judge's ruling on a motion. Either trial counsel or an appellate attorney can file the single justice petition. There is no right to file a single justice petition; the attorney must decide if the interlocutory appeal has merit. "Meritorious," in this context, means a decent case worth your time and the single justice's time; it need not be a clear "winner."

How do you appeal?

A. Final judgments. A client who wishes to appeal a final judgment must file a notice of appeal, accompanied by certain motions, in the trial court within 30 days of entry of the judgment on the trial court's docket. Those motions include: Motion for Appointment of Appellate Counsel, Motion for Fees and Costs of Appeal, and (where necessary) a Motion for Stay Pending Appeal. Sample motions and a sample notice of appeal can be found here: <https://www.publiccounsel.net/cafl/professional/triallitigation-practice-tools-and-resources/>. If the client is a parent, that parent must sign the notice of appeal. For a child-appellant, only the attorney needs to sign the notice. Many courts have a specific form they want you to use for the notice of appeal.

B. Interlocutory orders. Do not file a notice of appeal; it will only confuse the clerk's office. The petition and supporting memorandum of law (and certain other documents) must be filed within 30 days of entry of the trial judge's order on the docket. We have model petitions and memoranda of law, as well as a comprehensive how-to guide for filing, on the CAFL Appellate Resources page at: <https://www.publiccounsel.net/cafl/professional/single-justice-practice/>

If a parent appeals, do I have to file my own appeal on behalf of a child who wants to return home, or can I just participate in the mother's appeal?

All parties who disagree with any part of the court's judgment must file their own notice of appeal; no one can "glom onto" another party's notice of appeal. This is true for both parents and children. If the child is unhappy with any aspect of the final judgment – termination, choice of plan, post-adoption contact, sibling visitation, etc. – you must file a notice of appeal for that child client. If your child-client's position is consistent with all aspects of the judgment, you need not file anything; we'll appoint appellate counsel for your child-client automatically.

Legal Practice Tips

I'm not going to make the 30-day deadline for my appeal – can I get an extension?

A. Termination and guardianship appeals. It's possible to get an enlargement/extension of the notice of appeal deadline from the trial court or the Appeals Court in a termination or guardianship (initial or removal petition) appeal. You can ask the trial court for more time if you are still within the 30-day period or no more than 30 days late. If you are more than 30 days late (that is, more than 60 days after entry of the judgment on the docket), you must ask an Appeals Court single justice for permission to file a late notice of appeal. We have a sample single justice pleading on the CAFL Appellate Resources page of the website at: <https://www.publiccounsel.net/cafl/professional/appellate-practice-tools-and-resources/model-appellate-motions-and-briefs/> If you are more than a year after entry of the judgment on the docket, you are out of luck under the Rules of Appellate Procedure.

B. Permanent custody adjudications and permanency hearing orders. If the final judgment you are appealing is a permanent custody order (to DCF, a parent, or a third party), you must file the notice of appeal within 30 days. The deadline cannot be extended because it is set by statute – G. L. c. 119, § 27. Similarly, if a client wishes to appeal a permanency hearing decision under G.L. c. 119, § 29B, the 30-day appeal deadline is statutory, so no extensions are permitted (even if the judge *wants* to give you more time).

C. Interlocutory orders. Because the 30-day deadline for single justice petitions under G.L. c. 231 § 118 is statutory, it cannot be extended. If a generous trial judge wants to extend the time, that extension is meaningless; it will only mislead you into believing that you can file your petition late. Single justices regularly deny petitions that are filed late (even if filed on the 31st day).

Where can I get help on my appeal or single justice petition?

The CPCS website has plenty of practice tools, information, and links that will help you protect your client's appellate rights and interests: <https://www.publiccounsel.net/cafl/professional/appellate-practice-tools-and-resources/>

The CAFL Appellate Panel Support Unit will also be providing a training throughout the Commonwealth called "Everything the CAFL Trial Attorney Needs to Know about Appeals." If you are a Private Attorney and have questions, you can reach the CAFL Appellate Panel Support Unit at:

Andrew Cohen, Director	Acohen@publiccounsel.net	(617) 910-5736
Ann Narris, Staff Attorney	Anarris@publiccounsel.net	(617) 910-5746
Sarah LoPresti, Staff Attorney	Slopresti@publiccounsel.net	(978) 219-5448

Staff attorneys should reach out to the CAFL Appellate Unit in Worcester. The Appeals Court website also has helpful links to standing orders, the Rules of Appellate Procedure, and general information: <https://www.mass.gov/orgs/appeals-court>



Social Worker FAQ: Motivational Interviewing – A Tool to help parents make needed changes to achieve their goals

By Meg Grant, CAFL Social Work Coordinator

Clients, for a variety of reasons, may have a hard time connecting and engaging with their attorney. Recognize that you likely represent just another person in the system that took away their children). Additionally, remember that your client is struggling with real and complicated issues, often intertwined with social challenges, such as poverty, mental health issues, and substance use disorders, that have impacted their ability to successfully parent their children. Despite these issues, it is important to remember that all parents have strengths and most have the ability to make the changes necessary to resume their parenting role. In addition, family separation is a traumatic experience and each person moves through the trauma differently based on their own life experiences, and their own history of trauma. Many parents need a moment to grieve, catch their breath, and muster their resources before they can begin the work of addressing the issues that may have brought the family into the child welfare system. Finally, in some situations, it may take time for parents to even understand what DCF is asking of them. Despite all this, attorneys have to find a way to develop a positive working relationship with their clients in hopes of helping them reach their legal goals.

So knowing this, how do you engage the client? Motivational Interviewing is an evidence based approach to help people overcome ambivalence, identify discrepancies between their behaviors and wishes, and be motivated to change. The use of this technique seems particularly appropriate given that, for some of our clients, their behaviors may be inconsistent with achieving their desired goals in their legal case. This technique also shifts the model of engagement from directive to supportive. You are actively engaging them in the discussion and placing value on their right to self-determination. By the time many attorneys meet their clients the client has already been told (over and over again) what they are doing wrong and what exactly they need to do. It is important that attorneys not fall into the trap of being just another person giving directions without listening. This is where Motivational Interviewing can be very helpful.

Examples of the 5 key principles to Motivational Interviewing:

1. Express empathy through reflective listening.

“So what you are saying is that you are tired of everyone telling you what to do and telling you that you are a bad parent. Tell me more about this.”

2. Develop discrepancy between clients’ goals or values and their current behavior.

“Tell me what you would like to happen in the future. Tell me how what you are doing is fitting in with your goals.”

3. Avoid argument and direct confrontation.

“Here are some things you could do to help you reach your goals, and I am here to help when you are ready.”

Motivational Interviewing con't

4. *Adjust to client resistance rather than opposing it directly.*

“It sounds like you have thought a lot about some of the barriers (stumbling blocks) to reaching your goals. What are some of the possible solutions?”

5. *Support self-efficacy and optimism.*

“I am really impressed that you are thinking about making some changes. I want you to know that I believe you can do it.”

Some providers use the **OARS** model when working with clients:

- O Open-ended questions:** They provide the client with an opportunity to provide more information than just yes or no.
“Tell me about your understanding of why DCF took custody of your children. What has been your experience working with the Department?”
- A Affirmation:** Statements that acknowledge the clients strengths and the work they are doing.
“You have worked hard to make changes for your children. Being a good parent is important to you.”
- R Reflections:** Statements that reflect back what the client has stated in an effort to confirm that we have accurately heard what was said.
Client: “I did everything they asked and they still took away my children.”
Professional: “Even with all the hard work you did; DCF still took custody of your children.”
- S Summaries:** You can think of summaries as a long reflection. You can use this as an opportunity to confirm all that the client has talked about in an organized fashion.
“So let me see if I understand all that we talked about. Being a good parent is important to you. Before DCF took custody of your children, you did everything they asked and now you are worried about working with the Department because you are worried you can't trust

Hire a Social Worker to Work with You & Your Client

While Motivational Interviewing can be key to developing a positive working relationship with your client; remember that families have the best chance of reaching their goals when they not only have access to effective legal representation, but also have access to their own social worker, timely and appropriate services (identified through the MI process) that provide the chance to learn and grow, positive supports and the opportunity to make better choices.

If you have any questions about Motivational Interviewing or are interested in hiring a social worker for one of your cases, please contact me at mgrant@publiccounsel.net or 617-910-5839.

More information about motivational interviewing can be found at the following links:

- https://www.americanbar.org/groups/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/may-june-2017/motivational-interviewing--counseling-clients-in-challenging-con/
- <https://humanservices.ucdavis.edu/sites/default/files/131%20211%20MI%20video%20guide%20revised%207-29-15.pdf>
- https://www.childwelfare.gov/pubPDFs/motivational_interviewing.pdf