

# CAFL NEWS

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Fall 2019

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



## Message from the CAFL Training Unit

Summer is ending and the CAFL Training Unit is busy planning our fall training calendar. This month, we are looking forward to meeting the approximately 45 attorneys who are registered to attend our 7 day C&P and CRA certification training. Later this fall we will hold our two day expert witness training in Boston. In December we are looking forward to the 20<sup>th</sup> anniversary of the MCLE Delinquency and Child Welfare Conference. We also will present our biannual “Rogers” and “Trial Practice” trainings for our newer CAFL attorneys. The CAFL resource attorneys are also busy planning local programs. A sampling of programs can be found on page 4 of the newsletter. You can go to our website for a complete list of programs approved for CAFL CLE credit. <https://www.publiccounsel.net/cafl/training>. As always, please email us with training comments and suggestions at [cafltraining@publiccounsel.net](mailto:cafltraining@publiccounsel.net).

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### Criminal Justice Reform and Kinship Care

By Michael Dsida, Deputy Chief Counsel

In 2018 Massachusetts enacted legislation that made far-reaching changes in the Commonwealth’s criminal justice system. Among other things, changes in our statutes eliminated mandatory minimum sentences for certain drug offenses, encouraged greater use of diversion, and raised the minimum age at which a child can be held criminally responsible from 7 to 12. These changes, and others, were based in part on years of research regarding the minimal benefits and high costs of tough-on-crime laws – with the costs being borne disproportionately by individuals, families, and communities of color.

Unfortunately, the harmful effects of tough-on-crime policies may persist in various places, including in state intervention cases, even after the laws are long gone. Families are still regularly ruled out as kinship caregivers because of what might now be viewed as minor criminal offenses – mistakes from which people should be allowed to move on with their lives. Moreover, while racial justice was a key goal of criminal justice reform, the racially disparate impact of tough-on-crime laws and law enforcement policies still plagues the child welfare system, leaving us with racial disparities in kinship placement rates. The Child Welfare League of America sought to address this problem in its 2014 report regarding DCF, stating that background check requirements “should be sensitive to the role of disproportionality in criminal prosecution and conviction, and the impor-

*(Continued on page 2)*

## Criminal Justice Reform and Kinship Care (continued from page 1)



tance of placing children with relatives whenever possible.” Child Welfare League of America, “Quality Improvement Report” (2014) at 17. But that recommendation has not yet borne fruit. Instead of being “smart-on-kinship-placements,” DCF still seems wedded to a tough-on-crime approach when it comes to kinship care.

To help lawyers address these problems, CPCS has pulled together a substantial amount of clinical research that highlights the benefits of kinship placements and adoption. The research shows that kinship care and kinship adoptions result in fewer placements, better mental and physical health, fewer behavior problems, and higher levels of competence for children. That research is available on MyGideon. (If you need help accessing MyGideon, please email [CAFLtraining@publiccounsel.net](mailto:CAFLtraining@publiccounsel.net).) While DCF attorneys and caseworkers may not be persuaded by the research, some judges may be, and they may be willing to press DCF to approve relatives who might otherwise be subject to a discretionary disqualification. Attorneys for children and parents can also challenge discretionary disqualifications of relatives – and even lifetime presumptive disqualifications – by invoking 110 CMR 7.101(2), which requires DCF to prioritize kinship placements and to make “[e]very reasonable effort” to place a child with kin. For example, in a case in which DCF rules out a kinship placement because a household member committed one or more Table C offenses, the attorney can challenge DCF’s efforts if it has not helped the family demonstrate that they do not pose an “unacceptable risk of harm” to the child under 110 CMR 18.11(1). After all, DCF does not satisfy the “every reasonable effort” requirement when it merely informs the potential kinship caregiver under 110 CMR 18.09(2) and (3) that he or she is ineligible to serve as a foster parent. The research on the benefits of kinship care can also support a request for the court to give direct custody to a relative.

Changes in the criminal justice system have helped and will continue to help many current and future CAFL clients. Our clients will benefit even more if DCF and the courts embrace the principles underlying those reforms – an embrace that our advocacy can help facilitate.



*“It is absolutely critical to strengthen our efforts to listen to the families and youth served by the system and integrate their voices into all aspects of child welfare planning and improvement. ... Ensuring family and youth voice further recognizes that families and youth are the experts on their circumstances and are the individuals most knowledgeable about solutions that will benefit them.”*

Jerry Milner, Associate Commissioner, U.S. Children’s Bureau  
*“Engaging, Empowering, and Utilizing Family and Youth Voice in All  
 Aspects of Child Welfare to Drive Case Planning and System Improvement”*  
 ACYF-CB-IM-19-03 (8/1/19)

## Legal Updates: New 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 Varik, 18-P-1363, Aug. 16, 2019 (Agnes, J.) [[Slip Opinion](#)] (inadequate adoption plan)

In this appeal from a decree terminating parental rights, the father and Varik argued that DCF's adoption plan was deficient and, because judicial approval of an adequate plan is a precondition to a decision to terminate parental rights, the decree terminating the father's parental rights should be vacated. The Appeals Court agreed that the adoption plan was inadequate but vacated only *that part* of the decree; it affirmed the termination of the father's rights.

This decision contradicts the plain language of the adoption statute. It is also inconsistent with several decisions in which the termination decree was vacated because the plan was inadequate. *See Adoption of Stuart*, 39 Mass. App. Ct. 380 (1995); *Adoption of Dora*, 52 Mass. App. Ct. 472 (2001). The father and Varik have requested further appellate review. Those requests are pending. **Until the SJC acts on those requests, the Appeals Court's decision does not take effect. No one should cite *Varik* as precedent.** We will keep you posted. In the meantime, counsel should continue to argue that a trial judge cannot determine whether termination is in a child's best interests, and thus cannot terminate parental rights, without having enough information to meaningfully assess DCF's ultimate plan for the child.

Connor Evans v. Commonwealth, SJ-2019-0245, August 15, 2019 (Budd, J.)

In this recent G.L. c. 211, § 3 single justice decision, Justice Budd of the SJC held that courts cannot demand community service of indigent defendants who are unable to pay their \$150 counsel fees. According to the decision, the court must first determine if indigent people are able to afford the \$150 fee. If they are not able, the fee must be waived entirely. If they are able to afford the fee, the court may then consider community service. This decision concerned a criminal defendant, but it applies just as much to our parent clients, who are often charged counsel fees or made to complete community service in order to have the assistance of an attorney. While not binding precedent, the *Evans* decision is a great resource for advocating against harmful fees imposed on clients; it is persuasive and contains some forceful language about the rights of indigent people.

Brackeen v. Bernhardt, No. 18-11479 (5th Cir. Aug. 9, 2019) [[Full Opinion](#)] (constitutionality of ICWA)

On August 9th the Fifth Circuit Court of Appeals issued its long-awaited decision in *Brackeen v. Bernhardt*, reaffirming the constitutionality of the Indian Child Welfare Act. The Court overturned a decision by a federal judge in the Northern District of Texas that struck down parts of the law as unconstitutional. ICWA gives placement preference to biological family members, other members of the child's tribe and other Native American families. The Texas judge ruled that the provisions favoring placement with Native American families was an impermissible racial preference in violation of the equal protection clause. Following decades of legal precedent, the Fifth Circuit disagreed, holding that the placement preferences were not "race based" but instead are intended to protect the political sovereignty of Native American tribes. In a press release, the National Indian Child Welfare Association declared: "It is a resounding victory for the law and those who fought to protect it. ICWA is vital for protecting the well-being of Native children."

## Legal Updates: New Appellate Decisions Con't



### Adoption of Luc Update:

In *Adoption of Luc*, 94 Mass. App. Ct. 565 (2018), 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.** The SJC heard oral arguments in this case on September 6, 2019. You can watch at <https://boston.suffolk.edu/sjc/archive.php> (docket SJC-12719). 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.

## Selected Upcoming Trainings



### **Everything the CAFL Trial Attorney Needs to Know about CAFL Appeals**

September 30, 2019 – 1:00 – 3:00pm – Brockton Juvenile Court (3rd Flr) – Brockton - RSVP, CAFL Resource Attorney, Tara Comendul (tcomendul@outlook.com). [Approved for 2 CAFL/CLE credits]

### **Games of Thrones: Judicial Bias Training**

October 15, 2019 – 2:00 – 4:00pm – CPCS Office – Fall River - For registration, contact CAFL Resource Attorney Astrid Kitchen (amkitchen@comcast.net). [Approved for 2 CAFL/CLE credits]

### **Everything the CAFL Trial Attorney Needs to Know about Appeals**

October 16, 2019 – 2:00 – 4:00pm – Massachusetts School of Law – Andover— RSVP, CAFL Resource Attorney, John Haroian (jdharoian@msn.com). [Approved for 2 CAFL/CLE credits] [NOTE: THIS TRAINING WILL ALSO BE OFFERED IN SALEM]

### **Judicial Bias Training: Games of Thrones**

October 24, 2019 – 11:00 am – 1:00pm – Boston Juvenile Court (Courtroom B) – Boston— For information and RSVP, contact CAFL Resource Attorney Emilie Curtis (curtislaw@icloud.com). [Approved for 2 CAFL/CLE credits]

### **20<sup>th</sup> Annual Delinquency and Child Welfare Conference**

December 13, 2019 – 9:00 – 5:00pm – Massachusetts Continuing Legal Education - *Stay tuned for further details about our keynote and workshops.*

### **Expert Witness Training**

November 19 & 20, 2019 – 9:00 – 4:00pm – Ashburton Place (Function Room) - Boston - [Approved for 12 CAFL/CLE credits] Please RSVP at <https://www.eventbrite.com/e/presenting-and-challenging-expert-opinions-tickets-68177214885>

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

## CAFL News and Announcements

### Message from the Trial Panel Support Unit

As it's the beginning of another school year, the CAFL Private Counsel Trial Support Unit wants to reintroduce our team. Carol Rosensweig is the Director of the CAFL Private Trial Panel. Our newest attorney, Lisa Augusto, has a wide range of experience working with various staff trial offices, as well as working with the private bar in her rotation in our Appellate Panel Support Unit. Our other three staff attorneys have a wealth of experience working as members of the CAFL private bar. Alexandra Roark practiced in Middlesex and Worcester; Alice Turner in Suffolk and Norfolk; and Paula Caradonna in Essex and Middlesex.

Margaret (Meg) Grant is the CAFL Director of Private Social Work Services. Her work focuses on expanding our expert witness database and assisting the private bar in assessing the need for social service expertise. She can be reached at [mgrant@publiccounsel.net](mailto:mgrant@publiccounsel.net). We couldn't do any of this without Rita Caso, our Administrative Assistant and Certification Coordinator, tracking attorney certifications, CLEs, and a million other things ([rcaso@publiccounsel.net](mailto:rcaso@publiccounsel.net)), and our Administrative Assistant, Linda Tabbut ([ltabbut@publiccounsel.net](mailto:ltabbut@publiccounsel.net)).

The Trial Panel Support Unit strives to give you what you need to help you better advocate for our clients. We've assigned county responsibility to individual staff attorneys so that folks know who to call first for advice. If there's a conflict, we'll get another attorney to work with you. Here are our regional assignments:

- Alex, [aroark@publiccounsel.net](mailto:aroark@publiccounsel.net), 617-910-5741, works with Middlesex North (Lowell), Hampden, and Worcester counties.
- Alice, [aturner@publiccounsel.net](mailto:aturner@publiccounsel.net), 617-910-5743, works with Norfolk, Suffolk, and Berkshire counties.
- Paula, [pcaradonna@publiccounsel.net](mailto:pcaradonna@publiccounsel.net), 617-910-5828, works with Essex, Middlesex South, and Franklin/Hampshire counties.
- Lisa, [laugusto@publiccounsel.net](mailto:laugusto@publiccounsel.net), 617-910-5738, works with Plymouth, Bristol, and Barnstable counties.

We are available to answer calls or emails requesting information or advice from the private bar. Our email address is [caflattorney@publiccounsel.net](mailto:caflattorney@publiccounsel.net). Check out our website to find the answers to frequently asked questions, various forms, previous newsletters, a list of our Resource Attorneys, links to training, and more at [www.publiccounsel.net/cafl](http://www.publiccounsel.net/cafl).

We can help with single justice inquiries, including getting you individual support or finding a mentor. Sample single justice petitions, memoranda of law, and accompanying motions, as well as helpful formatting and e-filing guides, are on our website at: <https://www.publiccounsel.net/cafl/professional/single-justice-practice/>

Other model motions and memos are available on My Gideon. If you need help accessing My Gideon, email [CAFLtraining@publiccounsel.net](mailto:CAFLtraining@publiccounsel.net).

If you have questions about an appeal, please contact our Appellate Panel Support Unit, at:

- Andrew Cohen, Director, [acohen@publiccounsel.net](mailto:acohen@publiccounsel.net), 617-910-5736.
- Ann Narris, [anarris@publiccounsel.net](mailto:anarris@publiccounsel.net), 617-910-5746
- Sarah LoPresti, [slopresti@publiccounsel.net](mailto:slopresti@publiccounsel.net), 978-219-5448

Appellate forms, including model motions and the Appellate Assignment Intake Form, are available at: <https://www.publiccounsel.net/cafl/professional/administrative-matters-and-forms/>.

## CAFL News and Announcements con't

### CPCS Participating on a Data Task Force with DCF, the Child Advocate and Others

In 2017, the Massachusetts state legislature created a task force to tackle important issues surrounding child welfare data reporting. This group is made up of representatives from DCF, the Office of the Child Advocate, the state legislature, and other advocates. The task force meets regularly to discuss how DCF should track meaningful data about consumer demographics, outcome measures, and the agency's progress in achieving permanency and well-being for families. The group also makes recommendations to the state legislature about required child welfare data reports.

Deputy Chief Counsel Mike Dsida and Staff Counsel Ann Narris have been working as part of this task force, lending CAFL's voice to these important discussions on behalf of the parents and children we serve. Recently, as an outcome of these efforts, DCF revised its quarterly and annual reports. The new DCF Quarterly Reports are available on the [DCF Commonly Requested Documents](https://www.mass.gov/lists/dcf-commonly-requested-documents) webpage, <https://www.mass.gov/lists/dcf-commonly-requested-documents>, and the revised Annual Report will be published soon. The DCF Quarterly Report acts as a snapshot of concrete data points at the end of each fiscal quarter. It gives information about different measures, including DCF's responses to allegations of abuse or neglect, placement types, lengths of stay for children in foster care, and permanency outcomes--all broken down by race. The DCF Annual Report provides a more in-depth tracking of significant metrics from the prior year. Among other things, the Annual Report will include data about sibling placement, placement stability, rates of reunification, and graduation rates, also broken down by race. This Annual Report will show some data trends over the past five years. Also at this DCF website, you can find the DCF federal reports and Massachusetts legislative reports, which provide additional data about the agency's work with our clients. Because statistical data can be a powerful advocacy tool, we encourage all social workers and attorneys to review these new reports as they become available on the DCF website. Additional sources of data about child welfare issues, that allow you to compare Massachusetts numbers to those from other states, include the [Annie E. Casey's Kids Count data center](#) and the federal [Children's Bureau statistics and research](#) webpage.

### CAFL Legislation

CPCS has arranged to have a number of bills filed this session that would be of significant benefit to CAFL clients:

**H.147** would require DCF and the court to ensure that siblings placed in DCF's care, custody, or responsibility are placed together, unless DCF makes a showing to the court, by clear and convincing evidence, that joint placement is contrary to the safety or well-being of at least one of the siblings. <https://malegislature.gov/Bills/191/H147.pdf>

**H.148** would require DCF to give advance notice of proposed non-emergency placement changes and prompt after-the-fact notice of emergency placement changes to the attorney for the child or young adult involved. It would also require that counsel be provided notice of a child's or young adult's involvement in criminal, delinquency, or school discipline proceedings and notice if a 51A report that implicates the child has been filed. <https://malegislature.gov/Bills/191/H148.pdf>

## CAFL News and Announcements con't

H.1508 would allow a child who is at least 12 years of age to petition to vacate a TPR order if more than two years have passed since its entry and the goal for the child is no longer adoption. <https://malegislature.gov/Bills/191/H1508.pdf>

H.1509 would amend the definition of “custody” under G.L. c. 119, § 21 to provide the court more authority to ensure that placement and other decisions are consistent with the best interests of the child. <https://malegislature.gov/Bills/191/H1509.pdf>

H.1509 makes clear that the court has discretion to revise its initial custody order before trial upon the filing of a motion alleging that there has been a material change in circumstances that warrants modification of the initial order. <https://malegislature.gov/Bills/191/H1510.pdf>

H.1513 would provide courts the discretion to appoint neutral investigators in C&P cases, rather than requiring such appointments, and limit the admissibility of agency reports. <https://malegislature.gov/Bills/191/H1513.pdf>

All of these bills were the subject of legislative committee hearings in July and September, at which Deputy Chief Counsel Michael Dsida testified. We will update you on the status of the bills as the legislative session proceeds.

## Book Reviews: Recommendations for Fall Reading By Hannah Baker, CAFL Training



### Fiction:

We Need to Talk About Kevin by Lionel Shriver

The well-known story of a mom of a school shooter looking back over her son’s childhood and her parenting decisions. Worth a read even if you’ve already seen the movie with Tilda Swinton!

Gross Indecency: The Three Trials of Oscar Wilde by Moisés Kaufman

This semi-experimental play tells the famous story of Oscar Wilde’s imprisonment for homosexuality at the height of his fame as an author—but with a strong focus on the legal proceedings. It has some great courtroom scenes and has a lot to say about the role of the lawyer as counselor and as advocate.

White Oleander by Janet Fitch

A young artist is sent to a series of foster homes after her mother is arrested. A great look at the foster system through the eyes of a child.

Changeling by Victor LaValle

A magic realist take on parenting in the age of the internet, this acclaimed novel tells the story of a man whose wife is accused of killing their infant child.

Motherless Brooklyn by Jonathan Lethem

The story of a man – a disabled former foster child—who becomes a detective. This modern classic tells a dark yet warm and human story of a person figuring out his place in the world. Also the mystery is very good and

## Book Reviews con't



there's a car chase for those who enjoy them! Notwithstanding the title, portions of this novel take place in New England.

### Nonfiction:

#### Help at Any Cost, by Maia Szalavitz

An uncompromising dissection of the once-popular “wilderness survival schools” and the abuses that took place at them. This book is still very relevant today and can teach you to look for red flags in each unfamiliar program that a child client is placed in.

#### Random Family, by Adrian Nicole LeBlanc

A multi-year account of a journalist who essentially embedded herself in the daily life of a small number of families in a poor and under-served community. This book takes you into the day-to-day life of people very like our clients, with sensitivity and compassion.

#### How to Talk so Kids Will Listen & Listen So Kids Will Talk, by Adele Faber and Elaine Mazlish

This classic self-help book is directed at parents, but can be of great use to the child's attorney who is wondering how to connect with their surly teenage client. The authors explain how adults, teens, and kids may hear different things in the same conversation and how to change your method of communication so that you hear better what your children/clients are trying to tell you.

#### The Not Good Enough Mother, by Sharon Lamb

In this memoir, published just this past June, a Massachusetts psychologist tells the story of her many years' experience conducting parenting evaluations in C&Ps. This book should be a helpful peek behind the curtain of parenting evaluations—a look at what goes on in the mind of the evaluators that many of us have worked both with and against.

### Writing Tip: avoid too many synonyms



“The attorney for the Department made service of the documents.” “DCF counsel sent out the motion.” “Attorney Doe copied the lawyers on the case with the memorandum of law.” “The packet was served on all parties.”

These sentences can all mean essentially the same thing. But when you use more than one of them in the same piece of writing to refer to the same thing, your reader might get confused. Is “the packet” the same thing as “the documents”? Is “copying” someone the same thing as “serving” them in this case?

Similarly, a decision made by a DCF social worker may be attributed to “the social worker,” “the case worker,” “the Department,” “the government,” “DCF,” “the clinical team,” “the worker” or to the social worker by name—all in the same document. If too many different terms are used to refer to the same person, the lack of consistency can make your writing appear sloppy and your meaning unclear.

Synonyms should be used when necessary to convey precise shades of meaning. But you don't need to use them just for the sake of variety.



## Welcome to the Wellness Corner Procrastination

By Elizabeth Broderick, CAFL Training



I've been putting off writing this article on procrastination for weeks now. Why? Do I think I'll be smarter tomorrow? It is too boring? Have other tasks taken precedence?

What is procrastination and why do we do it? We all procrastinate due to the belief that taking action will cause a certain amount of pain and that doing nothing will help us temporarily avoid that pain. The root causes however can vary from task to task and are grounded in our individual personalities and experiences. We often dread certain tasks due to a lack of knowledge. There are the perfectionists who believe that they are not currently capable of the task at hand and hope that they will somehow acquire the requisite skills or knowledge before starting the task at some vague point in the future. Then there are the thrill seekers who need the adrenaline rush and convince themselves that waiting until the last minute makes them sharper and more efficient. Sometimes the task is just plain old boring.

The first step in conquering procrastination is to recognize that it is an emotional experience. Start by naming the emotion that is the cause of your reluctance to act. Is it anxiety, feeling inadequate, boredom, resentment? The combination of anxiety and perfectionism can lead to the belief that you can't do everything so you might as well do nothing. The reality is that completion is often more important than perfection. If it is lack of knowledge holding you back— look it up, seek guidance, ask a stupid question. For the thrill seekers – those who need to rely on a sense of urgency to get anything done –remind yourself that waiting does not make you sharper and more efficient at the last minute-just panicked and exhausted. Set artificial deadlines and give yourself a reward when you meet them or just enjoy the sense of accomplishment when the task is completed early. The anxiety of returning the phone call of an angry client, or a client who is seeking an answer you don't have, will soon turn to guilt the longer you wait. There will always be angry and disappointed clients, it's just the nature of our business. They won't become any less angry or disappointed while they are waiting for you to call. If you are bored, remind yourself that routine tasks are often the most necessary. You need to bill to get paid. You need to manage your files to prevent the future stress of looking for a document or the phone number of a potential witness on the eve of trial. Guilt, shame and self-doubt are often reasons for continuing to procrastinate. Forgive yourself for the delay and get moving. Even a small action will make you feel better and increase your confidence and the belief that you can handle the task at hand.

So how did I finally put my butt in the chair and write this column? No, I'm not any smarter today than I was yesterday. I took my own advice and considered my reasons for procrastinating. Is the topic too boring? That might be an indication that I should pick a new topic for this edition of the Wellness Corner. I stuck with it though. While not as exciting as reviewing a new day spa, confronting procrastination is necessary to reduce stress and is essential to good practice management. What if I'm not good enough? I recognized that the perfectionist in me finds any writing task intimidating. I reminded myself that completion is often more important than perfection. It isn't perfect. But it's done.

## Spotlight Service: Moms Do Care

By Rachel Botelho, Esq.



**EMPOWER**

A COMMUNITY BASED PROGRAM  
FOR PREGNANT, POSTPARTUM,  
AND PARENTING WOMEN  
WITH OPIOID USE



Moms Do Care is a service for pregnant or post-partum women with children less than three years old that struggle with substance use. A woman is eligible for services if the answer is yes to the following questions:

1. Are you pregnant, postpartum, and/or parenting a child under 36 months?
2. Are you age 18 or older?
3. Have you used heroin or any prescription opioid without a prescription, been on medication for an opioid use disorder, or have a history of an opioid overdose?
4. Do you want assistance with medication for opioid use, substance use treatment, recovery supports, and other healthcare services?

Moms Do Care works collaboratively with obstetricians, pediatricians, nurses, substance use treatment programs, Early Intervention, the Department and Children and Families, etc. If a mother is eligible, she will be assigned a care coordinator who creates an individualized care plan based on the client's needs. The individualized care plan can include referrals for substance use treatment and/or medication, counseling, parenting groups, prenatal and postnatal care, family support programs, housing programs, mental health treatment, and any other individual needs identified.

Additionally, each mother works with a Peer Recovery Coach. The Peer Recovery Coach is a mother who has experienced and navigated the complex process of motherhood and recovery. She is there to provide support and assistance to new mothers navigating this intricate system.

Moms Do Care provides services prenatal and postnatal. Moms Do Care has nurses and pediatricians on staff to assist with medical care and questions. The nurse can assist when a mother is pregnant to answer questions regarding medication assisted treatment, Neonatal Abstinence Syndrome, breastfeeding, etc. The pediatrician will provide for follow-up medical care for the child and assess the child's growth and development.

Moms Do Care is currently available in four locations: Cape Cod, Lowell, Beverly, and Worcester. The contact information for each location is the following:

- **Cape Cod - 508-0280-6597**
- **Lowell - 978-934-822**
- **Beverly - 978-880-5068**
- **Worcester - 508-334-6388.**

**“We meet moms where they are at, and support their recovery any way we can. These are moms who love their babies, have a lot of strengths, and we give them all the wraparound services they need to move in the direction they want for their families,” says RN Care**

**Legal Practice Tips: Litigating Reasonable Efforts at a  
72-Hour/Temporary Custody Hearing**  
By Ann Balmelli O'Connor, CAFL Appeals Office

We all know the rule: before DCF removes a child from his or her parents, DCF must make reasonable efforts to prevent or eliminate the need for removal. The reasonable efforts rule is meant to avoid unnecessary family separation and foster care placements, which harm children and families. In working with families who need DCF's assistance, DCF is supposed to resort to removal last — only after its reasonable attempts to avoid removal have failed.

Trial courts must determine whether or not DCF made reasonable efforts to prevent or eliminate the need for removal both at the initial hearing and at the 72/TCH. We used to think the determination mattered only to DCF, whose federal funding could be jeopardized by a no reasonable efforts finding. But we now know that the determination has important implications for our parent and child clients. When a court determines that DCF failed to make reasonable efforts before removing a child from his or her parents, the court can make orders to remediate the resulting harm. Because parent-child separation endangers the parent-child bond, a court may enter orders designed to protect that bond and promote timely reunification — including orders for parenting time that is more than one hour per week in a DCF office, and necessary services to facilitate reunification.

With this in mind, we can bring a fresh look to the 72-hour hearing, whether we represent a parent or a child client. When preparing for a 72/TCH, assume that you will be addressing 3 or 4 issues: (1) whether DCF can show by a fair preponderance of the evidence that the child would suffer serious abuse or neglect or would be in immediate danger of serious abuse or neglect with his/her parents; (2) whether DCF can show by a fair preponderance of the evidence that continuing custody with DCF is necessary to protect the child from serious abuse or neglect; (3) whether, before DCF removed the child, it made reasonable efforts to prevent or eliminate the need for removal; and, if not, (4) what court orders would remedy the harm caused by DCF's failure to make reasonable efforts, by promoting timely reunification? Counsel should address each one of these issues, laying out for the court what you (your client) wants the judge to find and to do, and why the evidence (or lack of evidence) supports your argument.

Prepare to litigate #3 by examining the affidavit DCF filed with its petition (to see what conditions or circumstances DCF claimed required removal and what, if anything, DCF did to address those before taking the child), speaking with your client (to get his/her version of the relevant portions of the affidavit and of DCF's story), and reading 110 C.M.R. § 7.010-7.095 (to identify specific services DCF could have offered to address the conditions or circumstances that led it to remove the child). Make a copy of all applicable sections of the regulations and put it in your file to use in cross examining the DCF caseworker. Make sure you know what the parenting time schedule is and what, if anything, DCF has done to try to provide parenting time that protects (or, in the case of a newborn, continues to develop) the parent-child bond.

At the hearing, litigate the reasonable efforts issue as zealously as the immediate danger and protection from serious abuse or neglect issues. Establish what circumstances led DCF to believe that removal was needed and whether and how DCF tried to address those circumstances prior to removal, so that removal would have been unnecessary. Where DCF's regulations provide for particular services that may have remediated or lessened any adverse conditions, question the caseworker about them. Many caseworkers have no idea what's in DCF's services regulations, and DCF has an obligation to follow them, and to avoid unnecessary and traumatic removal.

## Legal Practice Tips con't

This type of cross-examination also works if you support DCF, to show that they made the required reasonable efforts.

Don't let a DCF caseworker get away with just saying that "exigent circumstances" existed at the time of removal. Make sure that the circumstances actually were exigent. And if they were, establish whether or not DCF made efforts that were reasonable in light of the exigency. If DCF claims that the circumstances were so dire that there was nothing they could have done to avoid removal, establish whether or not they considered reasonable alternatives to taking the child. Remember that, at the least, DCF must discuss its immediate safety concerns and the child's needs with the parents, as that discussion might uncover reasonable alternatives to removal.<sup>1</sup>

Once you establish that DCF failed to make reasonable efforts to prevent or eliminate the need for removal, request that the court enter remedial orders. Ask the judge for anything that may help promote timely reunification, e. g., frequent parenting time (perhaps unsupervised) and permission to attend the child's medical appointments, school events, or other activities; specific services to address the issues precluding reunification; a reunification plan; etc. Talk with your client to figure out what they were doing before removal, and what the client wants to do and is able to do. Do not ask for more than your client is able to do.

The custody issue usually is the focus of 72/TCHs. But where a court orders that DCF maintain custody of a child pending a hearing on the merits, the potential benefit of orders designed to promote reunification is significant. Orders designed to maintain family connections and participation in each others' lives increase the likelihood of reunification, and reduce the trauma of removal. Except where it does not advance a client's objectives, counsel should purposefully litigate the reasonable efforts issue at these hearings.

<sup>1</sup> For a deeper discussion of DCF's obligations in exigent circumstances, see **FAQs - Reasonable Efforts Requirement and Exigent Circumstances** on MyGideon.



### **Social Worker FAQ: How Can Attorneys Help Minimize the Trauma of Transitions for Children in Foster Care?** By Meg Grant, CAFL Director of Private Social Work Services

There is a reason why moving is called a top life stressor. By their very nature, moves can lead to anxiety and can create disruptions. Whether we are moving to a new house, new town or a new country, we are leaving behind our memories, our stories and often important people in our lives. If moving for adults is stressful, imagine the impact on a child. Any move, no matter the necessity, can create serious trauma for a child. Case workers often believe that moving a child is in their best interest and they will feel safe and secure after removal from a neglectful and/or abusive situation. However, after interviewing children removed from their parents, Rosalind Folman noted that they were not comforted by an adult's general reassurances that they were being removed from danger and being taken to a better or safer place. (Folman, 1998)

While the initial separation from a primary caregiver can be distressing, once a child enters the foster care system, they often experience additional changes in caregivers undermining their potential to form secure attachments and hindering healthy emotional development. The more changes in caregivers that children in

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foster care experience, the more likely they are to exhibit oppositional behavior, crying, and clinging (Gean, Gillmore, & Dowler, 1985). These behavioral and emotional difficulties can lead to further disruptions in care as children's behavioral and emotional difficulties are one of the major reasons for placement disruption. (Oosterman, Schuengel, Slot, Bullens, & Doreleijers, 2007).

So knowing the potential for long term harm, what can attorneys do to minimize the trauma of transitions? Child development research highlights the importance of consistency, predictability and stable attachments in order for children to thrive. Helping professionals should think about how to minimize losses when children are placed out of the home: pets, toys, siblings, extended family members, friends, neighborhoods, schools, pediatricians, therapists. What parts of the child's life can be maintained?

Sometimes caseworkers and other helping professionals become desensitized to the effects of these moves. Attorneys can help remind case workers of the impact of multiple placement changes on children. Whenever possible make sure:

- Moves are expected, planned and gradual.
- Moves are timed to minimize other disruptions (e.g., not two days before the SATs, three weeks before school ends).
- Children are given age appropriate information and explanations of what is happening and what is planned and given time to prepare.
- Children are encouraged to express their negative feelings regarding losses.
- Children are allowed to bring toys, pets, pictures, etc. to foster homes or adoptive homes.
- Changes in schools, neighborhoods, health care providers and other supports are avoided when possible.

Additionally, the negative effects of moves (both immediate emotional pain and developmental harm) can be reduced when:

- Children are given some degree of control.
- Following removal from parents, visits are arranged as quickly as possible.
- Parents are connected with services immediately to ensure the family's separation is short.
- Caregivers work together to minimize children's conflicts of loyalty and transfer attachments from one caregiver to another.
- Children are given permission to display pictures of their parents and siblings, and to talk about their family.
- Children receive nurturing responsive care following moves.

***What about the garbage bags?*** We never want a child to feel like they are being taken out with the garbage. When adults are making decisions for children and do not include them in the process, they can create stories to fill in the gaps. Stories about their self-worth. Developmentally children can feel like the center of the universe, so when bad things happen they often blame themselves. In addition to giving as much developmentally appropriate information as possible, adults should make sure that children have the tools necessary for a successful move...including suitcases. Make sure to reach out to local organizations and get your child client a suitcase. Never let them feel like garbage.



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Finally, attorneys may be one of the few constants in the life of a child involved in the child welfare system. You may be the “holder of their story” and as such you can work with other helping adults to help them create a lifebook. Take pictures of your client regularly. Jot down notes about school, foster homes, sports and friends. Help them put together a book that tells their story, so that as they move through life they will have the information necessary to understand their story. For more information about lifebooks go to <https://www.childwelfare.gov/topics/adoption/adopt-parenting/lifebooks/> or <http://fosteringperspectives.org/fpv17n2/lifebooks.html>

Transitions and changes are part of the child welfare system. As attorneys we can work with other professionals to minimize the trauma and loss for children. Here are links to additional resources about reducing the trauma of transitions in child welfare:

- <https://spaulding.org/wp-content/themes/twentyfifteen-child-sfc/archive%20pdf/LessenTrauma9-10.pdf>
- <https://www.advokids.org/childhood-mental-health/transitions/>
- <http://www.ocfcpcourts.us/assets/files/list-751/file-921.pdf>
- [http://www.ncsl.org/Portals/1/Documents/cyf/Social\\_Emoional\\_WellBeing\\_Newsletter.pdf](http://www.ncsl.org/Portals/1/Documents/cyf/Social_Emoional_WellBeing_Newsletter.pdf)
- <https://spaulding.org/wp-content/themes/twentyfifteen-child-sfc/archive%20pdf/LessenTrauma9-10.pdf>

### References:

Folman, R., I Was Taken: How Children Experience Removal from Their Parents Preliminary to Placement in Foster Care, *Adoption Quarterly*, 2(2) 1998.

Gean, M., Gillmore, J., & Dowler, J. (1985). Infants and toddlers in supervised custody: A pilot study for visitation. *Journal of the American Academy of Child and Adolescent Psychiatry*, 24(5), 608-612.

Oosterman, M., Schuengel, C., Slot, N., Bullens, R., & Doreleijers, T. (2007). Disruptions in foster care: A review and meta-analysis. *Children and Youth Services Review*, 29, 53-76.

### Maintaining Children In Their Schools Helps Provide Needed Stability

The federal Every Student Succeeds Act (ESSA) requires that children in foster care continue to be enrolled in the school they were attending before their removal from home (or move to a new placement once in foster care), unless doing so is not in their best interests. The school and DCF must collaborate to ensure the child receives transportation back to their school. For more information about ESSA's foster care provisions and its implementation in Massachusetts go to <http://www.clcm.org/schoolstability.html>.