

CAFL NEWS

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

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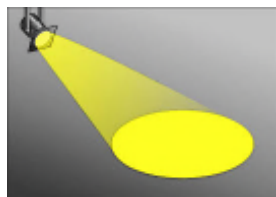
Message from CAFL Training



Happy New Year! January is a time of new beginnings. January is also National Slavery and Human Trafficking Prevention Month and the 20th anniversary of the Trafficking Victims Protection Act of 2000. There are many resources available for survivors of sexual exploitation as they work to create new lives for themselves. The EVA Center provides a continuous and comprehensive range of exit services for women who have been exploited through prostitution and sex trafficking. Check them out at www.evacenter.org. Among other services, Boston based My Life My Choice offers a Survivor Mentor Program, Sexual Exploitation Prevention Curriculum for adolescents and guides for parents and youth available on their website at www.mylifemychoice.org. The National Human Trafficking Hotline is (888)373-7888 or text BEFREE (233733).

Shining a Spotlight on CRA Advocacy

By Michael Dsida, Deputy Chief Counsel



When communicating about the critically important work done by CAFL private attorneys and CAFL staff, I typically talk or write about care and protection cases. That's not surprising, given how high the stakes are in C&P cases and given the volume of work done by private attorneys and staff on them. (From July 1, 2018, to June 30, 2019, more than 80% of the CPCS hours billed by CAFL private attorneys were for work on C&P cases.) But our clients, their families, and their communities also benefit from critically important advocacy in other CAFL matters, including CRA cases.

Advocating for children and parents in CRA cases, however, is no simple task. From a procedural standpoint, CRA cases differ substantially from other matters heard in Juvenile Court. The fact that there is no prosecuting or plaintiff's attorney is only the beginning. The informality of CRA proceedings also presents challenges, as does the fact that there is only one reported appellate opinion interpreting the CRA statute (and only a handful interpreting its predecessor, the CHINS law). These challenges are compounded by the fact that, just as in C&P cases, services for children and families involved in CRA matters are not always readily available.

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Shining a Spotlight on CRA Advocacy (continued from page 1)

Despite these challenges, CPCS private attorneys and staff who advocate for children and parents do impressive work in CRA cases, both within and outside of the courtroom. They file motions to dismiss truancy matters when clients miss school through no fault of their own. In “stubborn child” cases, they counsel the client about what actions to take (or avoid) to resolve the matter, while ensuring that the client retains ultimate direction over the case. On their own or in partnership with experts, they secure services sought by the client to help address the issues that led to the case being brought in the first instance – which often involves special education advocacy. Finally, they litigate CRA matters, including by initiating appeals, when litigation is necessary to achieve the client’s stated objectives. Through this work, CAFL private attorneys and CAFL staff regularly help clients avoid the perils of C&P cases and steer clear of the juvenile justice system.

Looking ahead, we hope to do more to share and promote best practices in advocacy for the benefit of all of our CRA clients. Unfortunately, there are no national standards regarding best practices in status offense cases, but we are looking to fill that void by developing performance standards for use in CRA cases in Massachusetts. We have already obtained input from a number of private and staff attorneys about what should be included, and we anticipate promulgating CRA performance standards later this year. In the meantime, we are available to provide support and guidance to you in your CRA work, either through our Trial Panel Support Unit for private attorneys or through supervision in our staff offices.

As always, thank you for your commitment to all of your clients.

Quote of Note

“...[Y]ou've got to have the ideas in your mind fueled by conviction in your heart. And the great gift I have is that I am the great grandson of people who were enslaved and they believed in freedom when it wasn't rational to. And I'm the grandchild of people who were terrorized by lynching and they believed in a better future, even though that didn't seem logical. I'm the child of people humiliated by segregation and Jim Crow, and yet they believed I could be anything I want. And it's that orientation of hopefulness that has sustained me. We say in the film and I say when I give talks, 'I believe that hopelessness is the enemy of justice.' If you want to do justice work, you have to be prepared to believe things you haven't seen. And it's what continues to define the work I try to do today.”

- Bryan Stevenson, author of [Just Mercy: A Story of Justice and Redemption](#)

Legal Updates

BY Katy Krywonis, CAFL Training

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/>.

Care and Protection of M.C. (II), 483 Mass. 444 (2019) [Full Opinion] (relief from impoundment)

This case is the second iteration of *M.C.*, following last year's remand in "*M.C. I.*," 479 Mass. 246 (2018). It is absolutely critical to read both *M.C.* decisions together. In both cases, the SJC addresses what C&P information may be released to the DA or a defendant in a related criminal case.

In *M.C. I.*, the DA and the father sought access to impounded C&P court records and transcripts to prepare for related criminal trials in Superior Court, which the mother opposed. On appeal, the SJC held that where the DA or a defendant seeks records from a C&P case, the requestor bears the burden of demonstrating that the records should be released under the good cause standard of Rule 7 of the Uniform Rules on Impoundment Procedure, and remanded for the Juvenile Court judge to apply the good cause test. The SJC also held that a parent who testifies in their C&P does not thereby waive their Fifth Amendment privilege in their criminal case; a parent's waiver of their patient-psychotherapist privilege in their C&P is likewise case-specific. A summary of *M.C. I.* is available [here](#).

In *M.C. II.*, the SJC was asked to decide whether the Juvenile Court judge properly applied the good cause standard. Weighing the particular factors in this case, the SJC held that:

- the father may receive the entire, unredacted C&P transcript to mount his own defense.
- the father may not have access to the Court Investigator and GAL reports, which the Court noted are "likely too speculative, full of lay opinion, and rife with hearsay to be admissible at a criminal trial;"
- the father may not have access to the C&P trial exhibits unless he shows that they are necessary to understand the trial testimony;
- the DA may not have access to the mother's C&P testimony unless and until she gives notice that she intends to testify in her criminal trial, in which case it would be admissible only for impeachment purposes; and
- the DA may not have access to the C&P testimony of the mother's therapist unless and until the mother gives notice that she intends to assert a mental health defense in her criminal trial.

This decision answers some questions left open in *M.C. I.*, and seems to provide parents who are facing criminal charges with some additional protections to testify in their C&P case. As always, you should consult with your client's criminal defense attorney about what *M.C.* means for them; how to best protect the particular client in the particular circumstances of their case(s).

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Legal Updates

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Adoption of Iliana, 96 Mass. App. Ct. 397 (2019) [[Full Opinion](#)] (child sexual abuse hearsay)

This case addresses the statutory requirements for the admission of child sexual abuse hearsay in proceedings to terminate parental rights. The mother argued, inter alia, that the trial judge improperly prohibited her from presenting opposing expert testimony to challenge DCF's evidence of the children's unavailability to testify at trial and the reliability of their hearsay statements about their sexual abuse. The Appeals Court agreed and concluded that the trial judge misinterpreted the statute when she barred the mother's experts from testifying because they were not "treating clinicians." The Appeals Court concluded that this error prejudiced the mother; it struck the trial judge's § 82 findings and vacated the decrees.

Care and Protection of Yarrick, 96 Mass. App. Ct. 903 (2019) [[Full Opinion](#)] (legal effect of unfitness finding after dismissal)

Following a review and redetermination hearing, the trial judge found the mother fit, returned custody to her, and dismissed the C&P. The judge further found that the noncustodial father remained unfit. The judge wanted that unfitness finding to have continued legal effect after the C&P was dismissed, and attempted to say so in his written findings. The father appealed. The Appeals Court rejected the trial judge's attempt to give the finding about the father preclusive effect because once the case was dismissed, that finding had no legal effect – it essentially disappeared. The Appeals Court reasoned that the finding that the father, who never had custody of Yarrick, continued to be unfit was not necessary to the disposition; the case could have been dismissed without making any findings about his fitness. The Appeals Court vacated that part of the judge's order and dismissed the rest of the father's appeal.

SJC Denies FAR in Adoption of Varik

In *Adoption of Varik*, 95 Mass. App. Ct. 762 (2019), 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. **The SJC denied further appellate review, so the Appeals Court's decision is effective.**

Varik seems to contradict the plain language of G.L. c 210, § 3. 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). That said, trial counsel should continue to argue that a judge cannot determine whether termination is in a child's best interests without having enough information to meaningfully assess DCF's ultimate plan for the child. Best interests is a child-specific inquiry; what serves the best interests of a toddler in a pre-adoptive home may not serve the best interests of that toddler's sibling, a teenager in a residential program. *Varik* doesn't change that. What *Varik* does change, however, is the relief the Appeals Court may grant if it determines that an adoption plan (or other permanent plan) is inadequate. Before *Varik*, the likely result was vacatur of the termination decree. Now, after *Varik*, the Appeals Court may affirm the termination and remand solely for a new hearing on the plan. If a case is remanded for a hearing on the plan, counsel should also consider filing a Rule 60(b) motion to vacate the judgment on the grounds that, without an adequate plan, termination is no longer in the child's best interests. This will be a case-specific inquiry. In some cases termination may still be in the child's best interests, but in others it may not, especially if there is a recruitment plan which seems unlikely to be successful.

Featured Services

CBHI Services

By Rachel Botelho, CAFL Staff Attorney



Massachusetts created the Children's Behavioral Health Initiative ("CBHI") to implement the remedy adopted by the Federal District Court in *Rosie D. v. Romney*, 410 F. Supp. 2d 18 (D. Mass. 2006), a class action lawsuit filed on behalf of children and youth with serious emotional disturbances. The goal of CBHI is to ensure that medically necessary home- and community-based services are provided to eligible children so they can remain in their homes, schools, and communities whenever possible.

Six services have been developed to support eligible youth and their families:

Intensive Care Coordination is a wraparound care planning process by a Community Service Agency. A Care Coordinator brings the family/caregivers and service providers together to work towards common goals. Team meetings are held to develop a Care Plan for the child. Team members might include social workers, teachers, psychiatrists, therapists, parents, Family Partners, and any other person of support to the child or the family.

Family Partners are parents/caregivers of children with special needs; they have been through the process themselves. Family partners provide one-on-one support and coaching to parents/caregivers as they work to meet their child's needs.

Mobile Crisis Intervention is a team that helps children and families resolve crisis situations and connects them with other services. MCI teams are available to meet with a child in crisis in the community or at home within an hour of being called.

In-Home Behavioral Services address behaviors that interfere with the child's everyday functioning. A team works with the child and parent/caregiver to create a behavior plan to help the child change these behaviors to improve their daily life.

Therapeutic Mentors help the child with their social and communication needs. TMs can meet with the child at home or in the community to work on age-appropriate behaviors, interpersonal communication, problem solving and conflict resolution, and other skills.

In-Home Therapy is a service for the entire family rather than just the child. Clinicians can help the family to communicate better to resolve conflicts, among other things.

For more detailed information regarding eligibility and full descriptions of these services, please see "MassHealth Behavioral Health Services for Children and Youth Aged 20 and Younger: A Guide for Staff Who Work with Children, Youths, and Families" available at <https://www.mass.gov/files/documents/2016/07/oi/cbhi-guide.pdf>. A CBHI service finder tool with current provider openings is available on the Massachusetts Behavioral Health Access website at www.mabhaccess.com.



Book and Movie Reviews

By Hannah Baker, CAFL Training



Books:

Sharp Objects by Gillian Flynn

If you are interested in modern gothic fiction, in suspenseful thrillers, or in pathological family dynamics, then do yourself a favor by skipping the TV adaptation and experiencing this dark and tautly-paced novel as it was written. The story of a reporter who returns to her small hometown to investigate a mystery in which her own family's involvement becomes more and more apparent, this novel has some complex things to say about the relationships between parents, children, and siblings.

The Bone Clocks by David Mitchell

Told in sections of varying genre, from Indiana Jones-style supernatural thriller, to domestic fiction, to children's stories, to near-future science fiction, this sprawling novel tells the story of one woman's life as she inhabits many roles: child, writer, psychic, parent, and grandparent.

The Makioka Sisters by Junichiro Tanizaki

The story of four sisters in pre-war Japan, this episodic novel is intimately concerned with the day-to-day life of a family and how the smallest interactions can sometimes reveal the deepest connections between family members.

Last Night at the Lobster by Stewart O'Nan

The story of a New England Red Lobster franchise on its last night of operation, this slim novel tells the stories of working people and their nuanced relationships with each other and with their jobs.

A Series of Unfortunate Events by Lemony Snicket

Young adult novels from before it was trendy for grown-ups to read young adult novels, this category-defying series tells the story of a group of siblings, AWOL from their various foster placements, who experience dangers and hardships around any corner. This smart and funny series is worth a read for book-lovers of any age. Reliable reports indicate that the Netflix adaptation is pretty good, but why not try the real thing?

Movies:

Marriage Story: This critically praised movie, currently in theatres, tells a story familiar from many of our cases, even if the socio-economic backdrop is not. Come for the emotional scenes of tenderness and screaming fights between husband and wife, stay for the true-to-life scenes of attorneys deciding where to order lunch.

What Maisie Knew: This 2012 spiritual adaptation of the Henry James classic tells the story of a custody dispute and subsequent fall-out through the perspective of a small child. If you have ever wondered what your child clients think of the process unfolding around them, this movie will make you think about it even more.

The Florida Project: A moving comedy/drama about the residents of a motel complex in Florida, including struggling parents and children involved with DCF. This critically-lauded movie tells its story with subtle writing, beautiful cinematography, and excellent acting.

Wellness Corner

Get Social!

By Elizabeth Broderick, CAFL Training



Social well-being is one of the five realms of wellness explored in this column. The other four are professional, emotional, financial, and physical well-being.

Prosocial behavior occurs when people act to benefit others rather than themselves. Research shows that those who act prosocially are happier, healthier and live longer. Developing relationships and pursuing goals outside of the workplace can increase your sense of social connection and improve your perspective on life in general. Low social support has been linked to negative health consequences including depression, decreased immune function and higher blood pressure.

Local bar associations are a great way to foster a sense of community and collegiality and lessen the sense of isolation so prevalent in the work we do. They are also a great place to find volunteer opportunities such as Law Day activities, lawyer for a day programs and legal clinics. Volunteer attorneys through the Boston Bar Association's M. Ellen Carpenter Financial Literacy Program present to groups of students in Eastern Massachusetts and at mock trials in federal bankruptcy courts. The Mass Bar Association's statewide Mock Trial Competition needs volunteer judges every spring. MassProBono.org is an online resource for attorneys, law students, and paralegals.

Need a break from the law? Opportunities for prosocial activities abound in your local community. The Massachusetts Service Alliance matches individuals and groups with local non profit agencies at <https://www.mass-service.org/programs/volunteer-generation-initiative/volunteerism>

Need a break from people? Time spent with four legged friends counts! The MSPCA and local humane societies offer many volunteer opportunities including cleaning, feeding and providing socialization and enrichment to animals. Or get outside – volunteer opportunities at state parks through the Mass Department of Conservation and Recreation (DCR) include trail maintenance, general clean up, removing invasive plant species, assisting with educational programs and events, and scientific and historical research on park resources and property. The DCR also offers volunteer opportunities through the Universal Access Program which provides outdoor recreation opportunities to park visitors of all abilities. More information can be found here: <https://www.mass.gov/service-details/volunteers-in-the-parks>. Similar statewide opportunities can be found through Mass Audubon at MassAudubon.org and the Appalachian Mountain Club at www.outdoors.org.

Want some snacks with your prosocial behavior? Schedule a blood or platelet donation online. Whole blood can be donated every 56 days and benefits trauma patients and others experiencing blood loss. Platelet donations take a little longer, usually around 2 hours, but each donation can yield 3 units that can go to 3 different organ transplant, cancer or trauma patients. Unlike whole blood donations, platelets can be donated every 7 days. If needles make you woozy, there are many other ways to volunteer at the Red Cross. You can type in your zip code and take a short online quiz that will match your skills and interest to local needs at www.redcross.org. Get social in the new year by finding some time to volunteer in your community!

Writing Tip

Use Language that Makes Your Point for You By Hannah Baker, CAFL Training

When telling our clients' stories, sometimes word choice is half the battle. Choose your words carefully, rather than falling into the default terminology that is so widespread in our cases. Here are just a few examples:



If you represent a client whose substance use is an issue in the case, try using the term “substance use disorder” or “substance use issues” rather than “substance abuse.” This word choice sends the message that your client is suffering from a medical condition rather than “abusing” anyone with their actions. Consider referring to alcohol or drug testing as “negative” or “positive”, instead of “clean” or “dirty”. Research show that that using stigmatizing terms results in more punitive responses by clinicians and courts.

Try saying “a victim/survivor of domestic violence” rather than “in a DV relationship” when you represent the non-offending party. You can address the issue of DV, without inadvertently implying through your word choice that both parties in the relationship were responsible for the violence. Challenge the language if another party accuses your client of “exposing” the children to domestic violence. Again, remind the parties and the court that your client is a victim.

When you are supporting reunification, try using the term “substitute care providers” rather than “foster parents.” This broader term, which can also encompass residential programs and group homes, calls attention to the fact that foster care is a temporary substitute for permanency, not the establishment of a new set of parents.

Relatedly, try not to use the term “birth parents” when your position is in support of the parents. Parents whose children have been removed and placed in foster care are just “parents.” Even when referring to parents whose children have been adopted, it’s possible to make it clear through context which set of parents you’re referring to.

In some courts, a trial to terminate parental rights that is held after a C&P adjudication is referred to as a “best interests” trial. If you are opposed to termination, do not use that term as it improperly suggests that best interests is the only issue before the court. Before terminating parental rights, the court must find that the parent is currently unfit and that termination is in the child’s best interests.

We all skim past many of these words when reading long documents, but on an unconscious level word choice affects everyone’s perceptions. Make sure your writing serves your client’s aims by being careful about your word choice.



Legal Practice Tip

Update on Special Immigrant Juvenile Classification

By Claire Valentin, CPCS Immigration Impact Unit

Special Immigrant Juvenile (SIJ) classification has long been a pathway for undocumented children and youth¹ in state care to regularize their immigration status and, in doing so, facilitate permanency, stability, and independence. In recent years, there have been substantial changes to the process by which youth qualify for SIJ classification. This update is intended to provide an overview of current best practices with regard to securing this important benefit for youth and young adults, age 18-21.

1. What is Special Immigrant Juvenile Classification?

Under immigration laws, non-citizens require permission from the Department of Homeland Security (DHS) to visit, live, and work in the United States. There are many different categories of immigration status. SIJ classification is a status that allows a youth, formerly without status, to apply for legal permanent residence (commonly known as a “green card”). To qualify for the classification, the individual must be:

- (1) under 21;
- (2) unmarried;
- (3) declared dependent on a juvenile court or be committed to or placed under the custody of an agency or department of the State, or an individual or entity appointed by the court;
- (4) the subject of a judicial determination that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law; and
- (5) the subject of a judicial determination that it would not be in the child’s best interest to be returned to the country of nationality or last habitual residence of the child or the child’s parents.

Once classified as a “special immigrant juvenile,” the youth may apply for a green card, a separate process that involves an entirely different set of eligibility criteria. If a SIJ youth qualifies for a green card, he or she receives permission to live and work permanently in the United States, and qualifies for additional benefits, such as eligibility for federal student loans. The benefits of legal permanent residence, especially the authorization to work and permanent nature of the status, are indispensable for attaining permanency goals of immigrant youth who have come in contact with the child welfare system.

2. What is child counsel’s role in securing SIJ classification for a client, age 1 - 21?

In order to apply to federal immigration officials for SIJ classification, a youth must first secure a predicate order from a juvenile or probate court that makes specific findings as to their eligibility for the classification. A motion for a predicate order (commonly known as a “Motion for Special Findings”) may be made in any proceeding before the Juvenile or Probate and Family courts, including C&Ps, CRAs, PYAs, guardianships, and delinquencies. Child’s counsel is indispensable in determining whether a client is eligible for SIJ classification, in counseling a youth about the risks and benefits of seeking the classification and in ensuring that a predicate order is secured prior to the end of the Court’s jurisdiction over the youth or the youth turning 21. If the youth is in DCF custody, counsel should work together with DCF to make sure that the youth’s progress towards immigration status is part of DCF’s permanency planning for the youth.

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Legal Practice Tip

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Counsel should also make sure that a judge reviews DCF's efforts and progress at all permanency planning hearings and foster care reviews.

Once counsel finds out that their child client in DCF custody is undocumented and eligible for SIJ classification, counsel must work with DCF to make sure that the necessary motions and request for findings are filed as soon as possible, hopefully well before the youth turns 18 and may leave DCF care or custody. Either counsel for DCF or counsel for the child may file a motion for special findings, and often will need to work cooperatively in order to do so. In particular, child's counsel is best positioned to assist with the drafting of a child's supporting affidavit when such an affidavit is necessary to establish certain facts in a case. Counsel should make sure that DCF refers the youth's immigration case to the private immigration attorney with whom the agency contracts to work on SIJ matters. The contracted immigration lawyer will then file the appropriate motions and pursue SIJ status with immigration authorities.

For a child client not in DCF custody, or for a child client who is in DCF custody and DCF has decided not to pursue SIJ status for the youth, counsel will need to take a more active role. Due to limited resources, the Department chooses to focus on assisting certain categories of youth. Where DCF will not pursue SIJ status for a client, counsel must contact the CPCS IIU to discuss how to file for the predicate order. Counsel will then need to find pro bono or legal services counsel to file and pursue SIJ status in immigration court proceedings.

If the youth does not gain SIJ classification before age 18, and the youth "signs on" with DCF after 18, DCF can continue to seek SIJ classification for that youth. Thus, SIJ classification should be part of the conversation and advice counsel gives to the youth about whether to continue in DCF responsibility after age 18. If the youth chooses to "sign on," counsel must advocate with DCF to continue to provide services, including placement, to the youth after age 18, and make sure that DCF continues to seek SIJ classification for the youth. As with youth under age 18, counsel should continue to advocate for the youth and make sure that SIJ status is part of DCF permanency planning and judicial review at permanency planning hearings for the youth after age 18 up to 21.

3. What does the Predicate Order need to Establish?

A motion for special findings must be accompanied by a detailed, proposed, predicate order. Over the years, federal immigration officials have become more exacting about the language and level of detail in predicate orders. As child's counsel, it is important to understand the federal immigration requirements in order to draft, or assist DCF's counsel in drafting, a legally sufficient proposed order. Immigration officials are no longer accepting pro forma order with conclusory language reciting required elements. In October 2019, federal immigration officials "clarified" the requirements for SIJ classification through three Administrative Appeals Office decisions². Two decisions—*Matter of A-O-C-* and *Matter of E-A-L-O*—involved orders that had been issued by the Probate and Family Court in Massachusetts for youth over the age or 18.

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Legal Practice Tip

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Together these decisions establish that the SIJ predicate order must:

Explicitly contain the three principle findings regarding

- 1) dependency or custody,
- 2) viability of parental reunification, and
- 3) best interest of the child;

Recite the specific factual basis for each of the three above findings; and

Cite to specific state law for each of the three SIJ findings.

Importantly, it is now clear that the juvenile court is not required to make a determination regarding legal custody of the youth or to have jurisdiction to place a youth in the custody of parent prior to making a finding about parental reunification. A juvenile court may, for example, make the determination in a CRA that a youth cannot reunify with a deceased parent even when the legal custody of the living, fit parent is not in question. In such a case, it is sufficient for the juvenile court to find that a youth is “dependent” on the court. Pursuant to a recently enacted statute, “dependent on the court” in Massachusetts means “subject to the jurisdiction of a court, competent to make decisions concerning the protection, well-being, care and custody of a child, For findings, orders or referrals to support the health, safety and welfare of a child or to remedy the effects on a child of abuse, neglect, abandonment or similar circumstances,” where “court” is defined to include the probate and family court and the juvenile court departments of the trial court. M.G.L. c. 119 s. 39M. In other words, any youth before a juvenile court in Massachusetts, whether for a C&P, CRA, delinquency or PYA, can be found to be “dependent on the Court” and the juvenile court may issue a legally valid predicate order for these youth until the youth reaches the age of 21 where the court maintains jurisdiction over the youth past the age of majority.

The clarifying decisions also make clear that the emphasis in a predicate order should be state child welfare law and not federal immigration law. Indeed, it is best practice not to cite to federal immigration law but to focus on relevant state law when moving for and establishing special findings. So, for example, a proposed order with a finding that parental reunification is not viable due to “neglect” should cite to relevant Massachusetts case law and DCF regulations defining “neglect.” Further, federal immigration officers will look at the “nature and purpose” of the state court proceedings and require that the proceedings were not brought for the sole purpose of securing an immigration benefit. For this reason, it is important for predicate orders to explain why the proceeding was initiated (ex: to remove a child from an abusive parent or to ensure permanency goals are met after a child ages out) and to highlight how the state court proceedings ensure, not just an immigration benefit, but rather the youth’s overall well-being.

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Legal Practice Tip

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4. What is M.G.L c 119 sec. 39M?

In 2018, as part of the FY 2020 Budget, Governor Baker signed into law an amendment to M.G.L. c. 119 called 39M. The statute creates a new cause of action for 18-21 year olds in Probate and Family Court that allows these youth to establish the findings necessary for SIJ classification and clarifies that the Probate and Family Court has jurisdiction to make decisions concerning the protection, well-being, care and custody of youth between ages 18-21³. In addition to creating a statutory cause of action in Probate and Family Court, the new statute helps clarify the jurisdiction and role of the Juvenile Court with regards to the new statute helps clarify the jurisdiction and role of the Juvenile Court with regards to SIJ findings and, as mentioned above, defines what it means for a youth to be “dependent” on the court. In addition, the statute makes clear that upon the filing of a motion for special findings, the Court is required to hear, adjudicate, and issue findings of fact and ruling of law as soon as administratively feasible and prior to the child reaching the age of 21 (whether favorable or unfavorable to the youth).

5. Who can I contact if I have questions about the SIJ process?

The CPCS Immigration Impact Unit (IIU) is a resource of expert immigration information for all court-appointed attorneys, including those appointed in CAFL cases. We recommend you contact the IIU for sample motions for special findings and sample proposed orders. IIU has also created a CAFL-specific intake form to facilitate CAFL attorneys’ access to and communication with the unit. If you are a CAFL staff attorney or a private bar attorney appointed in a CAFL case, please fill out and submit the form to receive assistance analyzing or understanding an immigration issue relevant to your CAFL case. You can find the IIU CAFL Intake Form online at <https://www.publiccounsel.net/iu/>.

The CPCS/CAFL Immigration page on MyGideon includes Practice Advisories, sample motions, and other resources for counsel to use in consultation with the IIU and/or an immigration attorney. If you do not know how to access the MyGideon.org website, please contact Katy Krywonis in the CAFL Training Unit at kkrywonis@publiccounsel.net.

Endnotes

1. Because SIJ classification is available to children and youth up until the 21st birthday, this practice advisory refers throughout to “youth,” rather than child, minor, or juvenile.
2. For more information regarding the three Administrative Appeals Office decisions, see the CLINIC and ILRC Practice Alert:
<https://cliniclegal.org/sites/default/files/resources/2019-1106-practice-alert-SIJS-policy-update.pdf>
3. For more on the implementation of 39M in Probate and Family Court, see the GBLS and MLRI Practice Advisory: available on MyGideon.

Social Worker FAQ: Why Parents and Children Need Increased Parenting/Family Time

By Meg Grant, CAFL Director of Private Social Work Services



Several months ago, I wrote about ways in which attorneys could support their clients in making parenting/family time more successful. While these recommendations remain unchanged, they don't do much good, if families are not getting enough time together. The belief that visitation serves to meet a legal requirement, leaves the true purpose out of the conversation. Generally speaking, the purpose of parenting/family time for children removed from their parents' care is multi-faceted and meant to serve both children and parents

Family time helps children maintain important relationships.

First, and foremost, family/parenting time helps children maintain relationships/attachments to those people with whom they have emotional connections. Child welfare expert Rose Wentz (2013) offers, "Healthy attachments are an essential part of the child's developmental progress and is [sic] essential to the child's sense of permanency." Ret. Judge Leonard Edwards (2003) cites studies showing that if attachment is maintained through visitation, separation distress will decrease, developmental progress will accelerate and well-being will increase. One Pennsylvania youth wrote: "Every time I was sent to a new placement I wasn't allowed to talk to my dad or my sister for a month and that made me so angry. How do you expect kids to be put in a new home with strangers and not be allowed to talk to the people they love and trust." (A.K., 21) (<http://www.ocfcpacourts.us/assets/upload/Resources/Documents/Chapter%207%20-%20Visitation.pdf>).

Family time reduces trauma.

Second, family/parenting time reduces the child's separation trauma. Wentz (2008) advises, "Children need to be reassured that their whole world has not disappeared or changed, that their parent is OK and still loves them and that they are not in care for doing something wrong... For example, a five year old who goes a week with no contact with his family is likely to feel forgotten, lost, worried or have other negative emotions. He will experience grief, loss and this can lead to emotions such as anger and depression...and may act on these emotions during the visit. The birthparent is likely to view the child's new behaviors as being caused by the foster parent and the foster parent to view the behaviors as a result of the child visiting his parents. The workers and others are uncertain how to evaluate the visit and are likely to decrease or stop visits thereby intensifying the child's sense of being forgotten or blamed." Mimi Laver from the ABA Center for Children and the Law echoed this sentiment and offered, "Children may be scared, unclear about whether they can hug their parents in front of people, unsure why they were removed and afraid to ask, and generally feel anxious about sharing their feelings of hurt and sadness. Parents may worry about whether the child is angry at them, may be afraid to come to the agency's office, may be uncertain about how to act in front of the case worker, and may be feeling ashamed and embarrassed. In addition to considering the logistics of the actual family time gathering, the professionals in the case should consider all of these emotions in supporting the family." It is important to remember avoidance or lack of visitation will not do anything to quell these feelings, but will likely allow them to fester and may cause lasting harm to the parent/child relationship.

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Family time helps parents improve skills.

Third, family/parenting time allows parents to learn, practice and demonstrate improved parenting skills. Of course, a supportive teaching model would need to be in place for parents to benefit from the latter.

Attorney Laver recommends “caseworkers and courts should prioritize family time that actually mimics family life. Because the quality of family time is such a strong indicator of successful reunification, family time itself should resemble real life as much as possible.” Wentz (2013) noted, “Parents who are not allowed to meet the child’s needs during a visit will not be able to maintain or strengthen the attachment to their child.”

Family time motivates parents and reduces feelings of hopelessness.

There is little doubt that parenting/family time helps parents stay motivated and focused on achieving reunification. Judge Edwards (2003) reports on studies showing that reunification is more likely when parents visit regularly. This makes sense since visitation maintains parents’ interest in their child and motivates them to continue reunification efforts. Judge Edwards (2003) further noted, “Visitation empowers and informs parents, helping them to overcome their beliefs that they are incapable as parents and to develop self-confidence...Interaction with their children can reassure parents of their importance in their children’s lives, an element that is essential for parents to develop the strength and confidence necessary for successful reunification.”

How much time is enough?

In most cases parenting/family time starts with one hour a week, which means at most children are connecting with their parents 52 hours a year. Would reaching the goals of parenting/family time even be possible in this limited amount of time? Research shows that children who have regular, frequent contact with their family while in foster care have a greater likelihood of reunification, shorter stays in out-of-home care, increased chances that the reunification will be lasting, and overall improved emotional well-being and positive adjustment to placement (Weintraub, 2008).

So how do we quantify frequent contact? The American Pediatrics Committee on Early Childhood, Adoption and Dependent Care reports: “For young children, weekly or sporadic visits stretch the bounds of a young child’s sense of time and do not allow for a psychologically meaningful relationship.” Wentz suggests that the frequency of visits should be based on what needs to occur in order to maintain and enhance parent/child attachment.

In an effort to address the need for increased visitation Wentz provides guidance around structuring visits to support the aforementioned goals. She also encourages the development of Connection Plans when children first come into substitute care. She defines a “Connection Plan” as “the written plan that describes how the

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child's connections will be maintained and enhanced. This includes parent/child visits as well as contact with siblings, extended family, support to stay in the same school, and cultural and community connections."

Please visit: https://www.courts.ca.gov/documents/BTB_XXII_IIA_2.pdf for examples of Connection Plans and recommendations regarding frequency and duration of family/parenting time for different ages needed to support relationships and attachments.

There is no doubt that the research supports the argument for increased family/parenting time. According to Judge Leonard P. Edwards, the juvenile court can and should play an important role in supporting family visitation and attorneys representing parents and children should make family/parenting time a major focus of their advocacy efforts. Finally, Wentz cautions, "When there is not enough contact to maintain a parent/child attachment and the child attaches to the new caregiver some professionals will recommend that the child's best interest is to stay with the new caregiver even if the parent has made substantial progress or the non-custodial parent, who through lack of contact opportunities, has not been allowed to develop that attachment."

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See also Ruth Wentz website at <http://www.wentztraining.com/>.

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