

DUE PROCESS ISSUE/RESOURCE BANK

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We hope to get all documents referenced below hyperlinked on the CPCS website (www.publiccounsel.net) or MyGideon (www.mygideon.org) so that parents' and children's counsel can access it easily. Until then, email us and we'll send you Word and/or PDF versions of the documents. While most cases and research are based on Massachusetts law, many of the intern memoranda represent 50-state research. As a caveat, please don't rely on law student memos; use them as a start for your own research.

DUE PROCESS –

- **Due Process – Basic Definitions and Requirements** (Short memo re key case cites and quotes; portion of Adoption of Meaghan *amicus* brief setting forth basic principles)
- **Due Process – Burden-Shifting** (Care and Protection of Erin, 443 Mass. 567 (2005); portion of one brief)
- **Due Process – Continuance** (3 Intern memos; several Massachusetts cases; portions of five briefs) (See also “Due Process – Right to Participate”)
- **Due Process – Counsel Conflict of Interest** (See “Due Process - Right to Counsel, Counsel’s Conflict of Interest”)
- **Due Process – Delay of Decision/Findings** (Short memo re Adoption of Don, 435 Mass. 158 (2001), and Adoption of Rhona, 57 Mass. App. Ct. 479 (2003))
- **Due Process – Delay of Trial** (Intern memo 5-2018; portions of two briefs; model “Motion for Expedited Conclusion of Trial” with out-of-state case law on speedy resolution of case; Juvenile Court Standing Order 1-10 on scheduling of trials)
- **Due Process – Delay of 72-Hour Hearing** (See “Due Process – seventy-two-hour Hearing”)
- **Due Process – Discovery** (Intern memo 12-2016; list of key authorities; Matter of N.L., 476 Mass. 632 (2017) (mental health case on right to continuance for counsel to prepare for hearing, including obtaining a psych. eval.); In Re William M.W. (Cal. 2019); portion of a brief; model memo of law in support of motion to compel production of DCF adoption assessment)
- **Due Process – Disposition, Choice of** (Short memo re: Adoption of Cadence, 81 Mass. App. Ct. 162 (2012)) (See also “Due Process – Judicial Bias, Judge Making *Sua Sponte* Decisions”)

- **Due Process – Evidence** (Portion of brief in Titus; list of key Mass. cases and copies of highlighted Mass. cases)
- **Due Process – Experts** (Intern memo 5-2018; list of key authorities; short portion of brief; short memo 2019)
- **Due Process – Interpreters** (See “Right to Participate – Interpreters”)
- **Due Process – Interstate Compact/ICPC** (Model motion for custody to out-of-state parent with due process, equal protection, and other arguments; In re Courtney R, (Tenn. 2017); In re BS (Cal 2012); 2019 AmJur Article; ICPC cheat sheet re: parents; ICPC case list of issues 2017; Icpcc and parents intern memo 2018; Donald W. v. Dep’t of Public Safety AZ 2019; list of key authorities)
- **Due Process – Judicial Bias**
 - **Conduct, bizarre** (LA case re judge’s bizarre conduct 2016; ABA article 2019: NV case re judge’s bizarre conduct)
 - **Conflict of Interest** (Portions of four briefs; intern memo re judge previously representing DCF 7-2016; intern memo re judge’s personal conflict of interest 11-2015; 2019 ABA article; 2011 NY ethics committee opinion; 2019 ABA Formal Opinion; comm v. cousins)
 - **Ex Parte Communications** (Intern memos 2011 and 2014; portion of brief; Article and ABA ethics opinion re judges researching case on web)
 - **“Forcing” Settlement** (Intern memo 2014; portion of brief)
 - **Recusal** (Intern chart re Mass. and other state law (2014); BBJ article (2015); short memo on Rippo v. Baker (SCOTUS on new standard for recusal based on bias); Wash. state brief (long) re judicial bias, conflict of interest & recusal (2018); Comm. v. Deconinck (summary) (SJC re recusal); Interest of NM (PA 2018); ABA Journal article 2018; Hilton v. Central Div of Housing (2019))
 - **Judge Asking Questions of Witnesses and Making Comments** (Adoption of Norbert, 83 Mass. App. Ct. 542 (2013); brief in Adoption of Norbert; intern memo re judicial commentary 2016; intern memo re judicial questioning 2015; portions of six briefs; Mass. R. App. P. 16(l) letter with case citations)
 - **Judge Calling Witnesses** (Intern memo 2015)
 - **Judge Interfering with Counsel’s Examination** (In re D.C., PA Super. 2018)
 - **Judge’s Sua Sponte Decisions** (Intern memo 2014; portion of brief)

- **Judge’s Use of Social Media** (Intern memo re judges’ use of social media 5-2018; Intern chart - Survey of Judicial Ethics Opinions 2014; ABA article 2013; Boston Bar J. article 2017; ethics opinion – Tenn. 2019; Carroll v. Miller (WI2020))
- **Structural Error** (Adoption of Norbert, 83 Mass. App. Ct. 542 (2013); short memo with case citations 2009; In re J.K., 2015 Ind. LEXIS 385 (2015))
- **Due Process – Notice of DCF’s Specific Unfitness Allegations** (Intern memo 2018)
- **Due Process – Right to Counsel**
 - **Basic Principles** (J.K.B., 379 Mass. 1 (1979); list of key authorities; Meaghan amicus brief (Word and PDF); V.V. amicus brief (Word and PDF); L. B. v. Chief Justice (Blouin) amicus brief (Word and PDF); amicus brief in N.H. right-to-counsel case; three charts/memos re source of right to counsel in all fifty states; Intern memo 2014)
 - **Child’s Right to Counsel**
 - **Counsel’s Access to Child** (In re A.S., 936 A.2d 1094 (Pa. Super. Ct. 2007))
 - **Right to Appointment of Counsel** (CPCS amicus briefs in Guardianship of V.V. and L.B. v. Chief Justice (Blouin) in Word and PDF format; Care and Protection of Georgette, 439 Mass. 28 (2003); Balboni v. Balboni, 39 Mass. App. Ct. 210 (1995); In re Christina M., 908 A.2d 1073 (Conn. 2006) (parents’ right to assert child’s right to counsel); Kenny A. v. Perdue, 365 F. Supp. 2d 1353 (N.D. Ga. 2005); three law review articles)
 - **Choice/Change of Counsel** (portions of three briefs; Comm. v. Means, 454 Mass. 81 (2009); Comm. v. Carsetti, 53 Mass. App. Ct. 558 (2002); Adoption of Ulon, 81 Mass. App. Ct. 1113 (2012) (Mass. App. Ct. Rule 1:28); In re C.C., 48 P.3d 244 (Utah Ct. App. 2002) (court must make inquiry re reasons for parent’s dissatisfaction with attorney), Adoption of Raissa (2018, not yet paginated)) (See also “Due Process – Right to Counsel, Denial of Counsel – Waiver/Refusal to Appoint Successor Counsel”)
 - **Competency to Assist Counsel** (In re E.D., 902 N.E.2d 316 (Ind. Ct. App. 2009))
 - **Counsel’s Conflict of Interest** (Intern memo 12-2015; chart/memo re Mass. cases and rules on counsel conflicts 2014; portion of one brief; comm. v. Cousin (2018); Adoption of Ted & FAR; Adoption of Trina, 84 Mass. App. Ct. 1123 (2013) (Mass. App. Ct. Rule 1:28) and FAR)
 - **Constructive Denial of Counsel** (Intern memo re concession of unfitness (7-2018); portions of five briefs, two appellant, two appellee; law review article; A.P. v. Commonwealth, 270 S.W.3d 418 (Ky. Ct. App. 2008)) (See also “Due Process – Structural Error”)

- **Denial of Counsel – Non-Indigency/Failure to Pay Fee** (Intern memo 2003; two single justice orders; two single justice petitions; motion to waive fee; motion to vacate order striking counsel (for failure to pay fee); affidavit of parent unable to pay; Comm. v. Mortimer, 462 Mass. 749 (2012); Comm. v. Godwin, 60 Mass. App. Ct. 605 (2004)).
- **Denial of Counsel – Refusal to Appoint Successor Counsel** (Comm. v. Means, 454 Mass. 81 (2009), Adoption of Ulon, 81 Mass. App. Ct. 1113 (2012) (Mass. App. Ct. Rule 1:28) and memo re Means and Ulon; portions of four briefs; Adoption of Raissa (2018, not yet paginated); summaries of five out-of-state counsel waiver cases in child welfare cases) (See also “Due Process – Right to Counsel, Choice/Change of Counsel”)
- **Denial of Counsel – Structural Error** (See “Due Process – Structural Error, Counsel Issues”)
- **Forfeiture of Counsel (by Conduct)** (Intern memo 2016); see also “Waiver of Counsel,” below.
- **Ineffective Assistance of Counsel** (Note: Model new trial motions, motions for leave to file motion for new trial, and supporting affidavits are available in Word format that we can email to counsel.)
 - **Advocating against Client’s Wishes** (Portions of three briefs; motion for new trial; Adoption of Flora, 60 Mass. App. Ct. 334 (2004); summary of McCoy v. Louisiana (SCOTUS) and ABA amicus brief in McCoy); see also “Throwing Client under the Bus,” below.
 - **Appellate Counsel** (Intern memo 2013; staff counsel memo 2011; portion of brief; Comm. v. Aspen, 85 Mass. App. Ct. 278 (2014); Comm. v. Stote, 456 Mass. 213 (2010); State v. O’Neil, 99 A.3d 814 (N.J. 2014))
 - **Basic Principles** (Intern memo 2013 re other states; list of key authorities; intern memo 2008; portion of brief; law review article on IAC in termination cases; website resource re IAC; notes from Attorney Jamie Sultan’s lecture re IAC new trial motions; quote from Justice Kagan; In re E.R.W., 528 S.W.3d 251 (Ct. App. Tex. 2017) (non-indigent parent’s right to raise IAC for retained counsel’s poor performance))
 - **Failure to Admit/Object to Evidence** (Staff counsel memo 2016; portions of four briefs; Comm. v. Salyer, 84 Mass. App. Ct. 346 (2013); portion of Comm. v. Sepheus, 468 Mass. 160 (2014); State v. Thompson (NH 2011))
 - **Failure to Call Witnesses** (Intern Memo 6-2017; portions of two briefs; Anderson v. Butler (1st Cir. 1988); portion of Comm. V. Ortega (2004); In Re MJH (Colorado 2007))

- **Failure to Investigate Case** (Key cases; portion of motion for new trial; Comm. v. Baker, 440 Mass. 519 (2003); Comm. v. Alvarez, 433 Mass. 93 (2000); In re Mental Health of K.G.F., 29 P.3d 485 (Mont. 2001)).
- **Failure to Participate at Trial** (Intern memo 2016; portion of a brief; Adoption of Azziza, 77 Mass. App. Ct. 363 (2010); Comm. v. Vickers, 60 Mass. App. Ct. 24 (2003); State ex rel. Children, Youth & Families Dep't v. Maria C., 94 P.3d 796 (N.M. Ct. App. 2004); In re Roque, No. 2005-T-0138, 2006 Ohio App. LEXIS 6961 (Ohio Ct. App. Dec. 29, 2006); State ex rel. State Office for Servs. to Children & Families v. Thomas, 12 P.3d 537 (Or. Ct. App. 2000))
- **Failure to Prepare for Trial** (Staff counsel memo 2016; Comm. v. Ly, 454 Mass. 223 (2009); Comm. v. Alvarez, 62 Mass. App. Ct. 866 (2005))
- **Failure to Pursue Crucial Issue/Defense** (Staff counsel memo 2016; intern memo re failure to pursue medical or scientific defense; Comm. v. Owen, 57 Mass. App. Ct. 538 (2003); Comm. v. Harding, 53 Mass. App. Ct. 378 (2001))
- **Failure to Understand the Law** (Comm. v. McCrae, 54 Mass. App. Ct. 27 (2002))
- **Improper Withdrawal** (Three Ohio termination decisions reversing judgment; In re K.A.S.E., 2018 WL 850303 (Missouri, Feb. 14, 2018))
- **Lack of/Suspension of Licensure** (Intern memo 6-2017; portion of Comm. V. Melo (2006))
- **Malpractice/BBO Consequences (for Trial Counsel)** (BBO public reprimand No. 2010-5; Glenn v. Aiken, 409 Mass. 699 (1991); malpractice insur. policies and email from insurer; two intern memos re legal malpractice actions against defense counsel)
- **Roles/Duties of Trial Counsel** (Seven articles, including a law rev. article and articles from Bar Counsel, NACDL, etc.; ABA Formal Op.; Mass. R. Prof. C. 1.16; California State Bar Formal Opinion 1992)
- **Sitting at Counsel Table** (Intern memo re parents' right to sit at counsel table 8-2018)
- **Telling Client Not to Appear** (Portion of brief)
- **Throwing Client Under the Bus** (Intern memo re concession of unfitness (7-2018))
- **Untimely IAC Claim (No New Trial Motion)** (Portions of two briefs)
- **Privately-Initiated Adoption Proceedings** (Adoption of Meaghan, 461 Mass. 1006 (2012); Meaghan amicus brief; cert petition in Texas case; chart re parents' right to counsel in private cases; memo re other cases 2014)

- **Stand-by Counsel** (Intern memo 2016; intern memo re Mass. and out-of-state cases; Moore v. Hall, 62 A.3d 1203 (Del. 2013))
- **Timing/Stages** (Portions of three briefs; Lavallee v. Justices in the Hampden Super. Ct., 442 Mass. 228 (2004); E.W. v. Jefferson Cty. Dep’t of Human Res., 872 So. 2d 167 (Ala. Civ. App. 2003); R.V. v. Ky. Dep’t for Health & Fam. Servs., 242 S.W.3d 669 (Ky. Ct. App. 2007); California case 2020)
- **Unrepresented Parties; Can Parents’ or Children’s Counsel Speak to DCF Social Workers or Foster Parents without the Permission of DCF Counsel?** (Intern memo 2015)
- **Waiver of Counsel (by Conduct)** (Intern Memo 7-2016; Adoption of Raissa and Raissa FAR application with detailed analysis of issue); see also “Forfeiture of Counsel,” above.
- **Due Process – Right to Notice**
 - **Adequacy of Publication Notice (Errors in Content/Choice of Publication)** (Intern memo 2016; Brown v. Malloy, 546 S.E.2d 195 (S.C. Ct. App. 2001); CML v. BEL (Ala. 2014))
 - **Basic Principles** (Summary chart of MA statutes, regulations and court rules pertaining to notice; list of key authorities; New Bedford Hous. Auth. v. Olan, 50 Mass. App. Ct. 188 (2000); Andover v. State Fin. Servs., Inc., 432 Mass. 571 (2000); In Re S.P. (CA 2020))
 - **Diligence/Efforts to Identify and Locate Parent before Publication Permitted** (Intern memo 2017)
 - **Failure to Provide Notice** (Portion of brief; In re A.H., 86 P.3d 745 (Utah Ct. App. 2004); Mayberry v. Flowers, 65 S.W.3d 418 (Ark. 2002) (setting aside adoption decree); summary of CML v. BEL (AL 2014))
 - **Nature of Hearing Noticed** (Short memo re due process requires notice of *trial* when court holds trial, notice of some other kind of hearing is insufficient; summary of In re GB (CA 2018))
 - **Notice to Incarcerated Parent** (Adoption of Jacqui, 80 Mass. App. Ct. 713 (2011) (See also “Due Process – Right to Participate, Incarcerated Parent”))
 - **Sufficient Time** (Intern memo 2016; J.B. v. Fla. Dep’t of Children & Fam. Servs., 768 So. 2d 1060 (Fla. 2000))
- **Due Process – Right to Participate**
 - **Children – Right to Attend or Testify** (A Child’s Voice ACNJ (2011); Intern Memo (unfinished 2016); Cumberland L. Rev. article (2013/2014); Nat’l Counc. of Juv. Ct. & Fam.

Ct. Judges policy statement and “Seen, Heard” tech. assist. bull. 2012; “Seen and Heard” ABA article; two emails with resources (*not to post*))

- **Interpreters** (Three intern memos; portion of law treatise; short memo on Comm. v. Lujan (wrong language/informal interp.))
- **Parent - Detained for Immigration Purposes** (ICE Policy on Parental Participation; list of key authorities; intern memo 2013; memo re habe’ing defendants from ICE custody)
- **Parent - In Other State or Other Country** (Intern memo 2014; list of key authorities; Article re use of videoconferencing; Juvenile Court Uniform Practice re videoconferencing; Bonaparte v. Devoti, 93 Mass. App. Ct. 603 (2018), and case summary)
- **Parent - Incarcerated** (Intern memos 2016 and 2005; list of key authorities; eight out-of-state cases; portions of two briefs; ABA ChildLaw Practice article 2001; intern memo with resources to locate incarcerated parents 2005; ABA article 2019)
- **Parent - Unable to Participate for Reasons beyond Parent’s Control (E.g., Illness, Accident, Mistake of Date/Time)** (Intern memo 2015; Comm. v. Carey, 55 Mass. App. Ct. 908 (2002)) (See also “Due Process – Continuance” and “Continuance”; summary of In re Sean P.H. (NY 2014))
- **Right to Evidentiary Hearing Generally** (In re Armando L., 1 Cal. App. 5th 606 (2016))
- **Right to Testify, Present Evidence, Cross-Examine Witnesses** (C.O. v. M.M., 442 Mass. 648 (2004); summary of Morgan v. Getter (2014); summary of In re Daniela G. (CA 2018))
- **Due Process – Seventy-Two-Hour Hearing**
- **Burdens, Evidence, Timing** (List of important Mass. cases; sample “Motion for Timely 72-Hour Hearing” with out-of-state case law; list of other out-of-state cases; ALR article on emergency removals in other states; intern memo 2013; summary of Oglala Sioux Tribe v. Van Hunnik; summary of Moore v. Sims, 442 U.S. 415 (1979))
- **Harm to Child (from Removal)** (Five clinical articles. *Note that this will soon be a much larger memo and/or collection of annotated articles*)
- **Due Process – Structural Error**
- **Basic Principles** (Intern memo 2010; list of key SCOTUS and Mass. cases)
- **Counsel Issues** (Adoption of Rory, 80 Mass. App. Ct. 454 (2011); brief in Adoption of Rory; PowerPoint page on structural error; two briefs in Michigan structural error appeal; chart with cases in other states re structural error for denial of counsel; In re Torrance P., 724 N.W.2d 623 (Wis. 2006))

- **Interpreter Issues** (See “Due Process – Interpreters”)
- **Judge Issues** (See “Due Process – Judicial Bias”)
- **Participation Issues** (See “Due Process – Right to Participate”)
- **Due Process – Visitation** (list of key authorities; Portion of Adoption of Rhona, 57 Mass. App. Ct. 479 (2003))