

**Committee for Public Counsel Services  
Children and Family Law Division  
Mentoring Program Manual**

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# CAFL Mentoring Program Manual

## Table of Contents

Introduction .....	1
Mentoring Overview .....	2
Roles of Mentors .....	3
How the CAFL Mentoring Program Works.....	4
Stages in the Mentoring Relationship .....	8
The Mentoring Relationship - Roles and Responsibilities of Mentors and Mentees....	9
The Mentoring Program - Roles and Responsibilities of Mentors, Resource Attorneys and CAFL Staff .....	12
<b>Appendices:</b>	
Competencies Checklist.....	A
Mentee Self Assessment.....	B
Mentoring Styles.....	C
Description of a Professional Development Plan.....	D
Sample Professional Development Plans.....	E
Blank Form for Professional Development Plan.....	F
Guidelines for Giving and Receiving Constructive Feedback .....	G
Giving Advice; Building Trust; Listening Skills.....	H
Initial Meeting Form.....	I
Sample Case Opening Memo.....	J
Sample Case Status List.....	K
Requirements for Graduation from the Mentoring Program.....	L
Sample Graduation Form.....	M
CAFL Trial Panel Performance Standards.....	N
Mentoring Across Differences.....	O
Mentee/Mentor Questionnaires.....	P
Ongoing Mentee Supervision Checklist .....	Q

# **CAFL Mentoring Manual**

## **Introduction**

The Children and Family Law Division (CAFL) of the Massachusetts Committee for Public Counsel Services (CPCS) provides legal representation to children and indigent parents in state intervention/child welfare matters, including care and protection proceedings, children requiring assistance cases, termination of parental rights cases, and other proceedings regarding child custody where the Department of Children and Family Services is a party or where the court is considering granting custody to the Department. Representation of CAFL clients is provided by a panel of private court appointed attorneys and by staff attorneys.

The CAFL Mentoring Program reflects a commitment to high quality representation for all clients. The Mentoring Program pairs private attorneys new to CAFL practice with attorneys both highly skilled and knowledgeable about the law and procedure related to CAFL practice. By doing so, the Mentoring Program supports additional CAFL goals of increasing recruitment and retention of skilled attorneys, and passing on to new attorneys the accumulated wisdom and best practices of more experienced practitioners. The mentoring relationship is dynamic and fluid, changing over time in response to the mentee's evolving needs and interests.

This manual provides a general overview of the CAFL Mentoring Program, including its purpose and organizational structure, as well as the roles and responsibilities of mentors, mentees, and CAFL Staff Attorneys. It also provides suggested guidelines for establishing and maintaining an effective mentoring relationship.

## Mentoring Overview

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Mentoring is a process that links an experienced person (mentor) with a less experienced person (mentee) to help foster the mentee's professional growth and development. Webster's Dictionary defines a "**mentor**" as a "trusted counselor, guide, tutor or coach," and a "**mentee**" (or protégé) as a person "whose career is furthered by a person of more experience, influence or prominence."

A mentor facilitates the mentee's **personal** and **professional** growth by sharing the knowledge and insights that he or she has learned through the years. Through the mentoring process, the mentor and mentee work together to reach specific goals and to provide each other with sufficient feedback to ensure that these goals are reached. CAFL's Mentoring Program addresses four critical areas:

- **Program Socialization and Orientation** builds a sense of connection to the values and mission of the CAFL Division. Mentors convey the purpose and importance of CAFL work through their words and personal example. They also share their knowledge and experience about local court and agency customs, rules and practices. They introduce mentees to judges, court personnel, other lawyers and social service providers with whom they will interact on behalf of their clients. Finally, mentors provide valuable information about administrative and logistical issues related to CPCS, including such things as record keeping and billing practices.
- **Knowledge and Skill Building** increases new attorneys' competence to represent CAFL clients. Mentors help new CAFL attorneys learn substantive law, court rules and procedures and improve their legal skills through experience, instruction and feedback.
- **Confidence Building** supports new attorneys' self-esteem and self-confidence as legal professionals. Mentors also provide emotional support to new attorneys by listening to them and acknowledging the challenges inherent in CAFL practice – both in terms of what is at stake for the clients and what is required of the attorneys.
- **Professional Development** helps new attorneys identify and select legal practice goals related both to CAFL practice and their overall development as lawyers.

## Roles of Mentors

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Mentors support mentees' professional development by fulfilling a number of complementary roles – as teachers, counselors, coaches, advisors, role models and sponsors. Which roles mentors assume depends on the mentees' needs and on the nature of the relationship between mentor and mentee. On any given day or within any period of time, the mentor may fulfill one or more of these roles depending on the mentee's specific needs or interests.

As a **teacher**, the mentor helps the mentee obtain knowledge and skills necessary to represent parents and children effectively. As such, the mentor is available to provide information about specific court rules or practices or share experiences in such areas as interviewing and building trust with clients or preparing for and conducting a trial.

As a **counselor**, the mentor helps the mentee sort through case-related issues and develops problem-solving skills. For example, in this role, the mentor might help the mentee analyze case files and determine what records or expert assistance he or she may need to obtain before trial.

As a **coach**, the mentor helps the mentee overcome performance difficulties by providing constructive feedback. In this role, the mentor reviews and comments on the mentee's written work (e.g., motions or other pleadings) and is available after significant court events to discuss how things went. As a coach, the mentor also provides emotional support, acknowledging the challenges and pressures inherent in this kind of work and providing positive reinforcement and constructive criticism.

As an **advisor**, the mentor helps the mentee develop realistic professional development goals that outline what knowledge, skills and abilities the mentee needs to obtain in order to achieve those goals.

As a **role model**, the mentor exemplifies CAFL values, ethics and standards of practice.

As a **sponsor**, the mentor introduces the mentee to judges, court personnel, attorneys and others with whom the mentee will need to interact.

## How the CAFL Mentoring Program Works

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Through the Mentoring Program, new CAFL attorneys (mentees) are paired with experienced attorneys (mentors).

**Who are Mentors?** Mentors are experienced attorneys distinguished by their exemplary lawyering skills and their expertise in the substantive and procedural issues related to CAFL practice. Mentors are characterized by their demonstrated interest in helping new lawyers learn and grow professionally, their willingness to share their professional experience and knowledge, as well as their accessibility, empathy and excellent interpersonal skills.

**How are Mentors Selected?** Experienced CAFL panel attorneys are encouraged to apply to be mentors. All prospective mentors must submit an application, including a statement of interest, a resume, a writing sample and the names of two references.

**Who are Mentees?** The CAFL Division assigns mentors to all attorneys who satisfactorily complete the certification training. Mentees include both relatively new lawyers as well as more experienced lawyers new to CAFL practice. While attorneys are under mentorship, they are provisionally certified to accept child welfare assignments. Provisionally-certified attorneys must work cooperatively with their assigned mentors. See CPCS Assigned Counsel Manual: Policies and Procedures.

**Duration of Mentoring Relationship.** Mentees are required to participate in the Mentoring Program until the mentee demonstrates a proficiency in handling CAFL matters. (See “Requirements for Graduation from the Mentoring Program.”) Mentors will update the CAFL Trial Panel Director about the work of each of their attorneys throughout the mentoring period. The CAFL Trial Panel Director determines when the mentorship ends. It is the mentor’s responsibility to recommend to the CAFL Staff Attorney assigned to the mentor’s region when a mentee is ready to “graduate” from the Mentoring Program. Similarly, mentors inform the CAFL Staff Attorney when they are concerned that the mentee lacks the ability to adequately represent clients in CAFL cases.

If the Trial Panel Director determines that the provisionally certified attorney no longer requires a mentor, the attorney will be fully certified and permitted to take additional trial court assignments without mentor supervision. At any time during the provisionally-certified attorney’s mentorship, the Trial Panel Director may:

- i. graduate the attorney from the mentor program;
- ii. remove the attorney’s certification to take new CAFL trial court assignments;
- iii. remove the attorney from the panel and have his/her cases reassigned; or
- iv. place caseload restrictions or impose other conditions on the attorney.

## How the CAFL Mentoring Program Works

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**Mentoring Program Coordination and Oversight.** CAFL Staff Attorneys provide direct oversight of the mentoring program. CAFL Staff Attorneys in consultation with the Trial Panel Director are responsible for matching mentors with mentees. Generally, matches are made based on geographic location and availability. Matches also may be made based on the needs of the mentee and the skills and knowledge of the mentor.

**Purpose and Frequency of Meetings.** Mentors and mentees are required to meet initially before mentees take on their first case assignments. Thereafter, they meet at least monthly to review cases and professional development goals. Depending on need, some mentor pairs will meet more often in the beginning until the mentor is comfortable with the mentee's skill level and knowledge of the substantive area. Likewise, as mentees gain experience and confidence, mentoring pairs may decide that they can meet less than monthly.

**Time commitment.** On average, a mentor will spend approximately 5 hours per month with each mentee. This may vary considerably depending upon the mentee's level of experience and caseload. More time may be required at the very beginning of the relationship, and later on when assisting the mentee with his or her first trial. The mentoring relationship is anticipated to last around two years.

**Team Member.** Each mentor will collaborate with other mentors in their region to support fellow members of the private bar. Mentors will work collaboratively to address minor professional issues within the private bar in their region.



## How the CAFL Mentoring Program Works

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**CAFL Trial Panel Support Attorneys.** CAFL Trial Panel Support Attorneys work directly with mentors and the Trial Panel Director to oversee and support the Mentoring Program.

**Quarterly Regional Meetings.** The assigned CAFL Staff Attorney will convene quarterly meetings with the mentors in their region. These meetings are a forum for mentors to share information about new case law, CPCS policy updates, systemic issues and local court developments. They also provide a forum for strengthening mentoring skills through discussion, problem-solving and training.

**Confidentiality.** Mentors are encouraged to create an open and candid relationship with their mentees. Information exchanged between mentors and mentees will be confidential to the extent that it is not related to job performance. It should also be noted that mentors are subject to attorney-client privilege related to all client cases discussed with the mentee. When providing peer support to each other through quarterly regional meetings, mentors should be careful to protect their mentees' confidentiality and not identify specific mentees by name or describe specific cases that their mentees are working on.

**Resource Attorneys.** Resource Attorneys are not mentors and do not oversee the mentoring relationships within their regions. The Resource Attorney's primary function is to provide advice and technical assistance to all CAFL trial panel attorneys in their regions. Resource Attorneys coordinate trainings with the CAFL Training Unit Staff and serve as a liaison between court personnel and CAFL trial panel members in their region. Resource Attorneys are expected to respond to mentee questions when mentors are not available. Resource Attorneys are expected to be available to mentors to provide educational materials and to brainstorm difficult cases. Mentors may be asked by Resource Attorneys to participate in various trainings in their region.

## How the CAFL Mentoring Program Works

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**CAFL Trial Panel Director.** The CAFL Trial Panel Director supervises CAFL Staff Attorneys and, after consultation with staff attorneys, are responsible for final decisions related to reducing panel attorney caseloads or removing them from the panel list.

**CAFL Training Director.** The CAFL Training Director is responsible for organizing ongoing training and technical assistance related to the Mentoring Program and CAFL practice.

**Ongoing Support and Monitoring.** CAFL Staff Attorneys have regular contact with mentors to provide support and ensure that the Mentoring Program overall and individual mentoring relationships are working effectively.

**Evaluation.** CAFL Staff Attorneys solicit feedback from mentors, and mentees, regarding the effectiveness of CAFL's Mentoring Program and make changes in the program structure as necessary.

## Stages in the Mentoring Relationship

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The mentoring relationship has several stages.

### **Stage 1: Getting Started**

Once the mentoring pair has been assigned and before the mentee takes his or her first case, the mentor and mentee must have their first meeting. The main purpose of this meeting is for the mentor and mentee to get to know each other, review their expectations for the mentoring relationship and clarify how they will work together (e.g., how often and when they will meet, how they will communicate with each other between meetings). They should carefully review the roles and responsibilities of mentors, mentees and the CAFL administrative office staff as outlined in this manual. This first stage is critical in beginning to develop a foundation of trust, honesty, commitment, and respect that will ensure a successful mentoring relationship.

### **Stage 2: Direction Setting**

During this stage, the mentor and mentee assess the mentee's incoming knowledge and skills and identify specific areas to be refined and developed. The mentor and mentee should refer to the CAFL "Performance Standards" and "Competencies Checklist" as measures for this assessment. Sources of information useful for the mentor to assess the mentee's incoming and developing knowledge and skills include the mentee's CAFL application and writing sample, feedback from instructors at CAFL Trial Panel Training and others who have observed the mentee's performance, the mentor's observation of the mentee's performance at initial 72-hour hearings, and review of the mentee's written work (e.g., pleadings, motion memos, other) and case files. Mentees should also independently identify what they consider to be areas of strength and challenge. Together, the mentor and mentee will then select and prioritize specific professional development goals, identify strategies for achieving those goals, and develop an action plan. (See "Description of a Professional Development Plan" and "Sample Professional Development Plan" in the Appendix.)

### **Stage 3: Progress Making**

This stage constitutes the longest period of the mentoring relationship. The mentor and mentee continue to meet regularly to review both the status of the mentee's open cases as well as the mentee's progress in achieving specific professional development goals. As the mentee achieves specific goals (whether in areas of legal practice, case management or substantive knowledge), the mentoring pair identifies new issues and areas to work on. During this stage, the pair may renegotiate certain aspects of the relationship, specifically, how often they will meet.

### **Stage 4: Graduation and Closure**

During this stage, the mentor and mentee assess the mentee's achievements regarding professional development goals. The mentor will recommend to the Administrative Staff Attorney when the mentee is ready to "graduate" from the Mentoring Program. (See "Requirements for Graduation from the Mentoring Program").

## The Mentoring Relationship – Roles & Responsibilities of Mentors & Mentees

<b>Expectations</b>	<b>Mentor</b>	<b>Mentee</b>
<b>Mentoring relationship</b>	Mentors are expected to work with the mentee to foster the mentoring relationship. They are expected to make sure that the mentee understands the requirements of the Mentoring Program.	Mentees are expected to work with the mentor to foster the mentoring relationship. They are expected to seek out mentors and keep them abreast of their progress and any concerns.
<b>Initial Mentoring Meeting</b>	Mentors are expected to meet with new mentees prior to the mentee's first case assignment. The mentor completes the "Initial Meeting" form and forwards it to CAFL.	Mentees are expected to attend an initial meeting with their mentor prior to being placed on any court list and becoming certified to take CAFL cases.
<b>Skills Assessments and Professional Development Plans</b>	At this first meeting, mentors work with mentees to assess their incoming knowledge and skills and to help mentees identify both professional strengths and areas to be developed. (See "Competencies Checklist"). Prior to the first meeting, mentors are expected to review the mentees' CAFL application and writing sample provided by CAFL staff. The mentor may request that the mentee bring an additional writing sample to the meeting.	At this first meeting, mentees are expected to begin working with their mentors to assess their incoming knowledge and skill and identify areas to be developed. If requested by the mentor, the mentee is expected to bring a writing sample to the initial meeting.
<b>Mentoring Meetings</b>	After the first meeting, mentors are expected to meet with mentees at least monthly. The purpose of these meetings is to review the mentees' case assignments and to support and monitor their progress in achieving specific professional development goals. Depending on the mentee's needs, more frequent meetings may be required. Mentors are expected to be prompt and keep scheduled appointments with mentees.	After the first meeting, mentees will meet at least monthly with their mentors. Depending on the mentee's needs, more frequent meetings may be required. Mentees are expected to be prompt and keep scheduled appointments with mentors. Mentees are expected to initiate contact with their mentors regarding the scheduling of meetings.

<b>Expectations</b>	<b>Mentor</b>	<b>Mentee</b>
<b>First 72-Hour Hearing</b>	Mentors are expected to help mentees prepare for their first 72 hour hearing. They are also expected to attend the hearing to provide support and feedback to the mentee.	Mentees are expected to notify their mentors immediately of their first case assignment and the time and date of their first 72-hour hearing.
<b>Professional Development Plans</b>	Based on information obtained through the initial Knowledge and Skill Assessment as well as from observation and other sources, mentors help mentees develop an initial Professional Development Plan and monitor their mentee's progress in achieving specific goals and objectives.	Mentees are expected to work with their mentor to develop an initial Professional Development Plan (PDP) through which they will work on specific goals and objectives. Mentees are expected to work toward goals and objectives identified in their PDP and to discuss their progress with their mentor at their monthly meetings.
<b>Feedback Generally</b>	Mentors are expected to provide constructive feedback to mentees regarding their performance and professional development.	Mentees are expected to be receptive to constructive feedback from mentors and to use this feedback as a foundation for refining and expanding their legal practice skills.
<b>Case review</b>	Mentors are expected to review mentee case assignments on a monthly basis and review and provide feedback to mentees on written work such as pleadings, pre-trial memos, briefs, findings of fact, case analyses, trial preparation and other written work.	Mentees are expected to provide their mentors with a monthly case status report in preparation for their monthly meetings. (See Sample Case Status List in the Appendix.)
<b>Caseload management</b>	Mentors are expected to monitor their mentees' caseloads to assist them in determining the appropriate number of CAFL cases to accept.	Mentees are expected to notify mentors of all case assignments within the first six months of their CAFL practice. After the first six months, mentees are expected to notify mentors of case assignments at a frequency determined by the mentor.
<b>Accessibility</b>	Mentors are expected to be available to mentees – between monthly meetings – to answer questions and provide necessary support. Mentors should return phone calls within a reasonable time.	Mentees are expected to seek out their mentors and keep them abreast of their progress and any issues of concern.

<b>Concerns about the mentoring relationship</b>	In the event a mentor has concerns about the mentoring relationship, the mentor is encouraged to first address the issue directly with the mentee. If that is not possible or is unsuccessful, the mentor should contact CAFL Staff for assistance.	Mentees are encouraged to communicate any concerns they have about the mentoring relationship first to the mentor. If that is not possible or is unsuccessful, the mentee should contact CAFL Staff for assistance.
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## Roles & Responsibilities of Mentors, Resource Attorneys & CAFL Staff Attorney

<b>Expectations</b>	<b>Mentor</b>	<b>Resource Attorney</b>	<b>CAFL Staff Attorney</b>
<b>Regular contact</b>	Mentors are expected to meet with their assigned CAFL Staff Attorney by phone or in-person on a quarterly basis.	<p>Resource attorneys are expected to communicate regularly with the CAFL Staff Attorney assigned to their region to update them on the status of the Resource program in the region.</p> <p>Resource Attorneys shall have contact with mentors as needed.</p>	<p>CAFL Staff Attorneys are expected to communicate regularly with mentors regarding the status of mentees and the Mentoring Program in their region.</p> <p>CAFL Staff Attorneys are expected to communicate regularly with Resource Attorneys regarding the needs of the private bar in their region.</p> <p>CAFL Staff Attorneys are expected to maintain a database of all mentors and mentees and provide mentors bi-annually, or as needed, with up-to-date lists of each mentee's open cases.</p>
<b>Regional Meetings</b>	Mentors are expected to attend quarterly regional meetings.	Resource Attorneys may meet with mentors to discuss the educational support needs of the private bar in the region. Resource Attorneys are not expected to attend quarterly mentor meetings discussing the progress of mentees unless requested to attend by CAFL Staff Attorney.	CAFL Staff Attorneys will attend regional mentoring meetings.

<b>Expectations</b>	<b>Mentor</b>	<b>Resource Attorney</b>	<b>CAFL Staff Attorney</b>
<b>Responding to Mentees</b>	<p>Mentors should make arrangements with other mentors in their Region to be available to mentees when they are not able to be available due to case conflict, vacation, etc.</p> <p>Mentors are expected to notify CAFL Staff when they will be unavailable to their mentees for a period of time that exceeds two weeks.</p>	Resource Attorneys are expected to respond to mentee questions when mentors are not available.	CAFL Staff Attorneys are expected to provide support and respond to mentee questions when neither the mentor nor the Resource Attorney is available.
<b>Support for Mentors</b>	Mentors are expected to solicit support from Resource Attorneys regarding legal practice issues within their region.	<p>Resource Attorneys are expected to respond to practice questions from mentors and others and to provide them with practice resources such as sample, motions, information, forensic resources, etc.</p> <p>Resource Attorneys are expected to be available to mentors to brainstorm difficult cases.</p>	CAFL Staff Attorneys are expected to provide draft motions and other practice resources to mentors and Resource Attorneys. They are also expected to be available to mentors to brainstorm difficult cases.



<b>Expectations</b>	<b>Mentor</b>	<b>Resource Attorney</b>	<b>CAFL Staff Attorney</b>
<b>Concerns about mentoring relationships</b>	In the event of concerns about a mentoring relationship, mentors are encouraged to first talk directly with their mentees. If that is not successful, mentors should then seek help from the CAFL Staff Attorney assigned to their region.	Resource Attorneys are not responsible for assisting with concerns involved in mentoring relationships.	CAFL Staff Attorneys are expected to work with mentors and mentees to address concerns and resolve problems within the mentoring relationship. However, CAFL Staff Attorneys should first encourage mentors and mentees to address their concerns together, if they have not already done so.
<b>Quality assurance</b>	<p>Mentors are expected to inform the CAFL Staff Attorney when they have concerns about the quality of a mentee's legal representation of clients.</p> <p>Mentors have the authority to limit a mentee's caseload and to restrict the courts where the mentee may accept assignments.</p>	<p>Resource Attorneys may be consulted about their observations of the quality of a mentee's legal representation of clients.</p> <p>Resource Attorneys are not responsible for directly addressing any concerns with the mentee directly.</p>	CAFL Staff Attorneys and mentors will confer regarding issues with the quality of a mentee's legal representation of clients.

<b>Expectations</b>	<b>Mentor</b>	<b>Resource Attorney</b>	<b>CAFL Staff Attorney</b>
<b>Provisional Certification</b>	If the mentor has concerns about the mentee's performance such that he or she is does not believe the mentee is making progress towards graduation or is considering recommending removal from the panel, the mentor should communicate those concerns to the CAFL Staff Attorney as early as possible, preferably no later than 12 months after assignment of the first case.	No responsibilities.	CAFL Staff Attorneys will determine whether the attorney will (a) be certified and permitted to take additional assignments without supervision of a mentor; (b) be certified and permitted to take additional assignments with continued mentor supervision; (c) be permitted to continue to take cases with a limitation on the number of cases allowed and/or type of cases assigned; or (d) be removed from the panel and have his/her cases reassigned.
<b>Mentee Graduation</b>	Mentors are expected to recommend to the CAFL Staff Attorney when a mentee is ready to graduate. To graduate, a mentee must demonstrate proficiency in each of the areas listed in the "Graduation Requirements."		CAFL Staff Attorneys are expected to work with mentors to decide when a mentee is ready to graduate.

## APPENDIX A

### CAFL Competencies - Legal Skills

Mentee Name: \_\_\_\_\_

Legal Practice Area	Specific Competencies	Incoming Skill Assessment	Suggested Action Steps & Resources Needed	Ongoing Skill Assessment
<b>Establish and maintain effective working relationship with client</b>	<ul style="list-style-type: none"> <li>· Get to know client, including family history, strengths</li> <li>· Explain role to client, including nature of confidential relationship</li> <li>· Explain nature of legal proceedings, client's rights and responsibilities, likely sequence of events</li> <li>· Ascertain client's goals or position</li> <li>· Present and discuss alternative strategies for achieving client goals</li> <li>· Enable client to make decisions by offering information and advice</li> <li>· Assess need for and work with interpreter or culturally competent advisor</li> <li>· Identify and respond to conflicts of interest</li> <li>· Correspond with client, including initial letter, confirming letters, case status reports</li> </ul>		<ul style="list-style-type: none"> <li>· <i>Review chapter in CAFL manual on representing parents</i></li> <li>· Review CAFL Performance Standards 1.1-1.9</li> <li>· Practice initial client meeting with mentor or another attorney</li> <li>· Review training materials and timeline for C&amp;P case</li> <li>· Attend seminars and/or review literature on client communication</li> <li>· Attend seminars and/or review literature on working with particular populations (e.g., mentally ill clients; clients with substance abuse problems; cultural, linguistic and racial minorities)</li> </ul>	
<b>Working with child clients</b>	<ul style="list-style-type: none"> <li>· All of the above and</li> <li>· Communicate with child clients in a developmentally appropriate manner</li> <li>· Identify important relationships such as siblings, grandparents, teachers, family friends</li> <li>· Determine child client's position in accordance with CAFL Performance Standards</li> <li>· Communicate effectively with child's caregivers and service</li> </ul>		<ul style="list-style-type: none"> <li>· <i>Review chapters in CAFL manual on representing children and child dev't</i></li> <li>· Review CAFL Performance Standards 1.5 and 1.6</li> <li>· Review Rules of Professional Conduct 1.14</li> <li>· Attend seminars and/or review literature on communicating with</li> </ul>	

Legal Practice Area	Specific Competencies	Incoming Skill Assessment	Suggested Action Steps & Resources Needed	Ongoing Skill Assessment
	providers		children · Attend seminars and/or review literature on child development related topics	
<b>72 Hour Hearings</b>	<ul style="list-style-type: none"> <li>· Protect the client's right to 72-hour hearing</li> <li>· Obtain all papers filed with court as well as others DCF will introduce, especially 51B report</li> <li>· Review probation record, intake, etc.</li> <li>· Analyze admissibility of documents</li> <li>· Obtain/summons other documents, police reports, medical and educational records, photographs</li> <li>· Develop theory for hearing</li> <li>· Prepare witnesses, including client, for 72-hour hearing</li> <li>· Conduct 72-hour hearing</li> </ul>		<ul style="list-style-type: none"> <li>· Review chapters in <i>CAFL manual on 72-hour hearing, Evidence, Privilege and Confidentiality</i></li> <li>· Review CAFL Performance Standards 2.1-2.3</li> <li>· Observe other 72-hour hearings</li> <li>· Review strategy with mentor</li> <li>· Invite mentor to observe hearing</li> </ul>	
<b>Discovery Planning &amp; Practice</b>	<ul style="list-style-type: none"> <li>· Develop discovery plan</li> <li>· Conduct informal discovery including interviews with client, DCF, other counsel, and collaterals; attendance at foster care reviews and other meetings</li> <li>· Request DCF records in writing</li> <li>· Conduct formal discovery including interrogatories, expert interrogatories, and depositions</li> <li>· Draft motions for discovery, oppositions, sanctions, motions for protective orders</li> <li>·</li> </ul>		<ul style="list-style-type: none"> <li>· Review chapter in <i>CAFL manual on discovery</i></li> <li>· Review CAFL Performance Standards 3.1-3.2</li> <li>· Review applicable rules of procedure</li> <li>· Discuss discovery strategy with mentor</li> <li>· Review sample motions and other pleadings</li> <li>· Prepare drafts for mentor's review</li> <li>· Attend seminars on discovery topics</li> <li>· Observe deposition</li> </ul>	
<b>The Court Investigator</b>	<ul style="list-style-type: none"> <li>· Explain investigator's role to client</li> <li>· Protect client confidentiality and</li> </ul>		<ul style="list-style-type: none"> <li>· Review chapters in <i>CAFL manual on Court</i></li> </ul>	

Legal Practice Area	Specific Competencies	Incoming Skill Assessment	Suggested Action Steps & Resources Needed	Ongoing Skill Assessment
<b>and/or Guardian ad Litem.</b>	<ul style="list-style-type: none"> <li>privileges</li> <li>· Prepare client for interview</li> <li>· Attend interview with client</li> <li>· Communicate effectively with court investigator to advance client's position, including identifying collaterals to be interviewed</li> </ul>		<ul style="list-style-type: none"> <li><i>Investigators and GALS; Privilege and Confidentiality</i></li> <li>· Review CAFL Performance Standard 4.4 and 1.8</li> <li>· Review Juvenile Ct. Guidelines for Court Investigators</li> <li>· Review Juvenile &amp; Probate Ct. qualifications for GALs and court investigators</li> <li>· Talk to mentor about working with court investigators and GALS</li> <li>· Talk to court investigators and GALS for tips</li> </ul>	
<b>Case Analysis, Planning &amp; Preparation</b>	<ul style="list-style-type: none"> <li>· Investigate the facts</li> <li>· Conduct legal research</li> <li>· Evaluate strengths and weaknesses of client's case</li> <li>· Evaluate opponent's case</li> <li>· Develop a theory of the case</li> <li>· Identify potential legal and non-legal means for achieving client goals</li> </ul>		<ul style="list-style-type: none"> <li>· <i>Review chapter in CAFL manual on Adjudication and Disposition</i></li> <li>· Draft opening memo for mentor's review</li> <li>· Review relevant statutes and case law</li> <li>· Discuss case strategy with mentor</li> <li>· Educate self on clinical issues by reading literature, Internet research</li> </ul>	
<b>Client Services, Placement &amp; Visitation</b>	<ul style="list-style-type: none"> <li>· Obtain necessary services, appropriate placement, parent child visitation, sibling visitation, and education</li> <li>· Advocate through:</li> <li>· Negotiation of service plans</li> <li>· Other informal advocacy</li> <li>· Foster Care Reviews</li> <li>· Motions for court orders</li> </ul>		<ul style="list-style-type: none"> <li>· <i>Review chapters in CAFL manual on Services, Placement and Visitation; Education; and Medical Care</i></li> <li>· Review CAFL Performance Standards 4.1-4.3</li> <li>· Review DCF regulations</li> <li>· Review DCF policies and</li> </ul>	

Legal Practice Area	Specific Competencies	Incoming Skill Assessment	Suggested Action Steps & Resources Needed	Ongoing Skill Assessment
			procedures · Consult with social worker or other hired expert	
<b>Motion Practice</b>	· Draft motions in limine to exclude evidence · Draft other motions, supporting affidavits, opposition to motions, proposed orders, and legal memoranda · Effectively argue motions in court		· <i>Review chapter in CAFL manual on Trial Preparation</i> · <i>Review chapter in CAFL Manual on Services (Section on AOD motions)</i> · Review sample motions · Prepare drafts for review by mentor · Attend writing seminars · Invite mentor to observe in court and give feedback	
<b>Working with Experts</b>	· Identify need for expert · Locate and hire expert · Prepare expert engagement letter · Secure funds for expert under the Indigent Court Costs Act · Work effectively with expert to advance client's goals		· <i>Review chapters in manual on Experts and the ICCA</i> · Review CAFL Performance Standard 4.7 · Discuss need for expert with mentor · Discuss with mentor avenues for locating expert · Review Indigent Court Costs Act · Review sample engagement letters · Review sample motions	
<b>Interlocutory Appeals</b>	· Consider interlocutory appeal after adverse rulings · Draft pleadings, docket and pursue appeal as appropriate		· <i>Review chapter in CAFL manual on Interlocutory Appeals</i> · Review CAFL Performance Standard 4.6 · Review sample pleadings · Draft pleadings for review by mentor · Rehearse oral argument with mentor · Request Mentor from	

Legal Practice Area	Specific Competencies	Incoming Skill Assessment	Suggested Action Steps & Resources Needed	Ongoing Skill Assessment
			CAFL Appellate Panel	
<b>Permanency Hearings</b>	<ul style="list-style-type: none"> <li>· Ensure client's right to meaningful hearing</li> <li>· Prepare objection to permanency plan</li> <li>· Prepare for and conduct contested hearing</li> </ul>		<ul style="list-style-type: none"> <li>· Review chapter in <i>CAFL manual on Permanency &amp; Trial Prep and Conduct</i></li> <li>· Review CAFL Performance Standards 5.1-5.3</li> <li>· Review G.L. c. 119, §§ 29B &amp; 29C</li> <li>· Review Trial Court Rules governing permanency hearings</li> <li>· Draft objection to plan for mentor's review</li> <li>· Observe contested permanency hearing</li> </ul>	
<b>Negotiation &amp; Settlement</b>	<ul style="list-style-type: none"> <li>· Negotiate favorable result for client (e.g., service plan, visitation, placement, custody)</li> <li>· Settle part or all of a case in accordance with the client's wishes and interests</li> <li>· Utilize mediation services where available and appropriate</li> <li>· Draft settlement documents such as agreements and stipulations</li> <li>· Document client's rationale in file</li> </ul>		<ul style="list-style-type: none"> <li>· Review chapter in <i>CAFL manual on Settlement</i></li> <li>· Review CAFL Performance Standard 7.</li> <li>· Review statutes governing post-adoption contact and guardianships</li> <li>· Discuss settlement strategy with Mentor</li> <li>· Draft stipulations and proposed orders for Mentor review</li> <li>· Attend seminar on permanency mediation</li> <li>· Review literature and/or attend seminar on negotiation skills</li> </ul>	
<b>Trial Preparation</b>	<ul style="list-style-type: none"> <li>· Update legal research</li> <li>· Update theory of the case</li> </ul>		<ul style="list-style-type: none"> <li>· Review chapters in <i>CAFL manual on Trial</i></li> </ul>	

Legal Practice Area	Specific Competencies	Incoming Skill Assessment	Suggested Action Steps & Resources Needed	Ongoing Skill Assessment
	<ul style="list-style-type: none"> <li>· Prepare “Trial Notebook”</li> <li>· Interview and prepare witnesses to testify, including the client, if appropriate</li> <li>· Secure the presence of witnesses</li> <li>· Secure documentary evidence favorable to the client</li> <li>· File pretrial motions, including motions in limine to exclude evidence, sanctions for failure to comply with discovery</li> <li>· Draft proposed findings and conclusions of law</li> <li>· Prepare for cross-examination of witnesses</li> </ul>		<p><i>Preparation and Conduct, Experts, Adjudication and Disposition, Evidence Privilege and Confidentiality, CHINS if this is a CHINS adjudication</i></p> <ul style="list-style-type: none"> <li>· Review CAFL Performance Standard 6.1</li> <li>· Review procedures for service of subpoenas, habeas corpus orders, introduction of hospital records</li> <li>· Discuss trial preparation activities with mentor</li> <li>· Draft motions for review by mentor</li> <li>· Draft proposed findings and conclusions of law for review by mentor</li> <li>· Review local court’s pretrial conference protocols and/or orders</li> </ul>	
<b>Trial Advocacy</b>	<ul style="list-style-type: none"> <li>· Examine lay and expert witnesses on direct and cross-examination</li> <li>· Introduce evidence, make offers of proof if evidence excluded</li> <li>· Make objections to exclude evidence</li> <li>· Make effective opening and closing statements</li> <li>· Preserve the record for appeal</li> </ul>		<ul style="list-style-type: none"> <li>· <i>Consult all chapters listed for Trial Preparation</i></li> <li>· Review CAFL Performance Standard 6.2</li> <li>· Consult <u>Modern Trial Advocacy</u> by Lubet, or other trial skills hornbooks</li> <li>· Observe other trials</li> <li>· Draft direct and cross for review by mentor</li> <li>· Draft opening and closing statements for review by mentor</li> <li>· Attend trial practice,</li> </ul>	



Legal Practice Area	Specific Competencies	Incoming Skill Assessment	Suggested Action Steps & Resources Needed	Ongoing Skill Assessment
			evidence seminars · Invite mentor to observe and give feedback	
<b>Oral Advocacy</b>	· Advocate persuasively in the trial court · Develop effective negotiation skills with DCF attorney and other counsel		· Observe motion sessions · Plan offensive and defensive arguments · Rehearse oral arguments with Mentor	
<b>Written Advocacy</b>	· Write clearly and persuasively		· Prepare drafts for mentor's review · Attend seminar on writing skills · Review samples of good writing · Consult books on legal writing	
<b>Appellate Practice</b>	· File an appeal of an adverse final judgment and request for stay · Secure the appointment of appellate counsel, if appeal from final judgment · Represent the client on the appeal until appellate counsel files appearance · Work cooperatively with appellate counsel		· <i>Review chapter in CAFL manual on Post Judgment Representation</i> · Review CAFL Performance Standard No. 8.2 · Review Rules 3, 6, 8(b)(2) of Appellate Procedure	
<b>Post-Judgment Relief</b>	· File post-judgment motions · Assert the client's right to statutory reviews · Prepare for and conduct post-judgment hearings		· <i>Review chapter in CAFL manual on Post-Judgment representation</i> · Review CAFL Performance Standard 8.2 · Read applicable Rules of Civil Procedure, e.g. 59, 60 · Research relevant case law	
<b>Business Basics</b>	· Develop system for organizing case		· Review requirements and	

Legal Practice Area	Specific Competencies	Incoming Skill Assessment	Suggested Action Steps & Resources Needed	Ongoing Skill Assessment
	<p>files, including maintaining running notes, copies of pleadings, correspondence, etc.</p> <ul style="list-style-type: none"> <li>· Create calendar system and back up</li> <li>· Create tickler system for deadlines, discovery, trial preparation</li> <li>· Create system for maintaining contemporaneous time records</li> <li>· Submit bills in a timely and appropriate fashion</li> <li>· Exercise good judgment about reasonable caseloads and commitments</li> <li>· Give attention to maintaining balance in life</li> <li>· Plan for the worst - professional back-up</li> </ul>		<p>procedures of CPCS Assigned Counsel Manual</p> <ul style="list-style-type: none"> <li>· Attend seminars on establishing and maintaining a law practice</li> <li>· Review mentor's organizing and calendaring systems</li> </ul>	

## CAFL Core Competencies - Legal Knowledge

Mentee Name: \_\_\_\_\_

Legal Practice Area	Specific Competencies	Incoming Skill Assessment	Suggested Action Steps & Resources Needed	Ongoing Skill Assessment
<b>Constitutional principles</b>	<ul style="list-style-type: none"> <li>· Knowledge of basic constitutional principles governing state intervention in the family</li> <li>· Understanding of specific due process protections afforded parties in state intervention proceedings (e.g., notice, right to rebut evidence, right to be present in court).</li> </ul>		<ul style="list-style-type: none"> <li>· Review chapters in CAFL manual on Adjudication and Disposition; Trial Preparation and Conduct</li> <li>· Review significant U.S. S. Ct. cases (e.g., Stanley v. Illinois; Santosky v. Kramer)</li> <li>· Review significant Mass cases (e.g., <u>Dep't of Pub. Welfare v. J.K.B.</u>; <u>Custody of a Minor</u>; <u>Robert; Manuel</u>)</li> <li>· Review Mass. case law on particular due process protections and limitations (e.g., <u>Quinn</u>, <u>Don</u>, <u>Whitney</u>)</li> </ul>	
<b>Statutory framework</b>	<ul style="list-style-type: none"> <li>· Working knowledge of G.L. c. 119 and c. 210 including being able to:</li> <li>· Identify sections relevant to particular types of cases (C&amp;P, 23C, CRA)</li> <li>· Identify particular provisions relevant to issue or stage of case (72-hour hearing, sibling visitation, review and redetermination, termination of parental rights, post-adoption contact)</li> <li>· Standing of the parties</li> <li>· Understanding of policies embodied in statutes (e.g., family preservation, reasonable efforts, safety,</li> </ul>		<ul style="list-style-type: none"> <li>· Review relevant statutes</li> <li>· Review chapter in CAFL manual on Statutory Overview</li> <li>· Review other chapters of manual depending upon type of case and issue (e.g., CRA, Probate Court proceedings, permanency hearings)</li> </ul>	

Legal Practice Area	Specific Competencies	Incoming Skill Assessment	Suggested Action Steps & Resources Needed	Ongoing Skill Assessment
	permanency) · Working knowledge of related statutes including G.L. c. 201, c. 209A & c. 209C			
<b>DCF Administrative Structure and Procedures</b>	· Understanding of DCF administrative structure, roles and responsibilities of DCF personnel · Understanding of 51A and 51B process (including DA Referrals & Central Registry) · Understanding of policy and procedures governing assessments, provisions of services, placement decisions and visitation · Understanding of administrative review procedures including foster care reviews, fair hearings, grievances		· <i>Review chapters in CAFL manual on 51As and 51Bs; DCF Administrative Process; Services, Placement &amp; Visitation</i> · Discuss with mentor roles and responsibilities of various DCF staff in area and regional offices where attorney practices · Review G.L. c. 119, §§ 51A-51F · Review DCF regulations and policies	
<b>Rules of Procedure &amp; Court Rules</b>	· Knowledge of applicable rules including Juvenile & Probate Court Rules & Time Standards, Rules of Civil Procedure, Trial Court Rules		· Review applicable rules · Discuss with mentor application of rules in specific situations (e.g., discovery, pre-trial conferences, post-trial relief)	
<b>Legal Standards</b>	· Understanding of legal standards that apply at various stages of a case including · initial removal · 72-hour hearing · motions · intervention · care and protection adjudication · termination of parental rights · parent and sibling visitation · review and redetermination · Understanding of legal standards governing administrative hearings		· <i>Review particular chapter in manual depending on issue</i> · Review relevant statutes and case law · Discuss legal standards with mentor	

Legal Practice Area	Specific Competencies	Incoming Skill Assessment	Suggested Action Steps & Resources Needed	Ongoing Skill Assessment
<b>Statutory &amp; Common Law Rules of Evidence</b>	<ul style="list-style-type: none"> <li>· Understanding of rules governing admission of documents including court investigator reports, DCF records, official records, business records, medical records</li> <li>· Understanding of rules governing admission of testimony including foundation, hearsay, and opinion</li> <li>· Ability to research evidentiary questions</li> </ul>		<ul style="list-style-type: none"> <li>· <i>Review chapter in CAFL manual on Evidence</i></li> <li>· Review controlling cases (e.g., <u>George</u>, <u>Michel</u>, <u>Astrid</u>, <u>Bruce</u>)</li> <li>· Review relevant statutes (e.g., child hearsay, hospital records)</li> <li>· Assist mentee in foundation questions</li> <li>· Observe contested hearings</li> <li>· Attend seminars on evidence</li> <li>· Review sample motions in limine</li> <li>· Discuss evidentiary issues with mentor</li> </ul>	
<b>Privilege &amp; Confidentiality</b>	<ul style="list-style-type: none"> <li>· Understanding of rules governing testimonial privileges including the social worker and psychotherapist privileges</li> <li>· Understanding of rules governing confidentiality including social worker and psychologist confidentiality, confidentiality of proceedings &amp; court records, attorney-client confidentiality, DCF records, medical records, school records, substance abuse treatment records</li> </ul>		<ul style="list-style-type: none"> <li>· <i>Review chapter in CAFL manual on Privilege &amp; Confidentiality</i></li> <li>· Review relevant statutes &amp; case law</li> <li>· Attend seminars on privilege &amp; confidentiality</li> <li>· Discuss issues with mentor</li> </ul>	
<b>Ethical Rules</b>	<ul style="list-style-type: none"> <li>· Knowledge of ethical rules including rules governing conflicts, confidentiality, communicating with represented and unrepresented parties, impaired clients, candor</li> </ul>		<ul style="list-style-type: none"> <li>· <i>Review chapters in CAFL manual on representing children and parents</i></li> <li>· Review CAFL performance standards 1.1, 1.4, 1.8</li> <li>· Review applicable rules of professional conduct and related case law</li> <li>· Discuss ethical issues with</li> </ul>	

Legal Practice Area	Specific Competencies	Incoming Skill Assessment	Suggested Action Steps & Resources Needed	Ongoing Skill Assessment
			<ul style="list-style-type: none"> <li>mentor</li> <li>· Attend seminars on ethics</li> </ul>	
<b>Medical &amp; Clinical Knowledge</b>	<ul style="list-style-type: none"> <li>· Knowledge of specific medical and clinical issues including domestic violence, substance abuse, child development, mental illness &amp; medication, physical &amp; sexual abuse, social work practice</li> <li>· Know how to seek out information through library research, internet, consulting with experts</li> </ul>		<ul style="list-style-type: none"> <li>· <i>Review chapter in CAFL manual on Child Development</i></li> <li>· Review literature and attend seminars on particular topics</li> <li>· Consult with expert</li> </ul>	
<b>Education</b>	<ul style="list-style-type: none"> <li>· Knowledge of education issues including special education, access to school, student discipline, school records, early intervention</li> <li>· Understanding of roles/responsibilities of counsel, GAL ed advocates, educational surrogate parents, DCF</li> </ul>		<ul style="list-style-type: none"> <li>· <i>Review chapter in CAFL manual on Education</i></li> <li>· Attend seminars and review literature</li> <li>· Discuss school issues with mentor</li> <li>· Consult with experts on education issues and education law</li> </ul>	
<b>Resources &amp; Services for Clients</b>	<ul style="list-style-type: none"> <li>· Knowledge of available resources and services for client in area where practice</li> <li>· Know how to find services for client</li> </ul>		<ul style="list-style-type: none"> <li>· Talk to mentor and colleagues</li> <li>· Research services through internet, published directories, consult with other</li> </ul>	
<b>Medical Treatment Decisions for Children</b>	<ul style="list-style-type: none"> <li>· Understanding of who may consent to medical treatment when child is in DCF custody</li> <li>· Knowledge of what constitutes extraordinary medical treatment</li> <li>· Knowledge of regulations, case law and court procedures governing judicial consent to administer extraordinary medical treatment</li> </ul>		<ul style="list-style-type: none"> <li>· <i>Review chapter in CAFL manual on medical treatment decisions</i></li> <li>· Attend mandatory 4-hour CAFL seminar</li> <li>· Review relevant cases</li> <li>· Review literature on antipsychotic medication</li> <li>· Discuss case strategy with mentor</li> <li>· Review pleadings including GAL report and physician's affidavit</li> </ul>	

Legal Practice Area	Specific Competencies	Incoming Skill Assessment	Suggested Action Steps & Resources Needed	Ongoing Skill Assessment
			· Observe hearing	
<b>Cultural Issues</b>	· Understanding of different cultures and the impact of particular cultural issues on the case (e.g., child rearing practices, family dynamics, interactions with authority figures)		<ul style="list-style-type: none"> <li>· Talk with clients</li> <li>· Review literature and attend seminars</li> <li>· Consult with experts</li> </ul>	





## APPENDIX B

### Self Assessment - Legal Skills

Mentee Name: \_\_\_\_\_

Legal Practice Area	Please rate your knowledge and skills in each of these areas between 1 and 5 with 1 - no knowledge or skills 5 - proficient in this area	Please identify any areas of particular strength	Please identify any particular areas you would like to improve your skills or knowledge
Ability to establish and maintain an effective working relationship with clients of diverse ages and backgrounds	1      2      3      4      5		
Working with child clients	1      2      3      4      5		
Prepare for and conduct a 72-hour hearing	1      2      3      4      5		
Discovery planning & practice	1      2      3      4      5		

Legal Practice Area	Please rate your knowledge and skills in each of these areas between 1 and 5 with 1 - no knowledge or skills 5 - proficient in this area	Please identify any areas of particular strength	Please identify any particular areas you would like to improve your skills or knowledge
Working with court investigators and guardians ad litem.	1      2      3      4      5		
Case analysis, planning & preparation	1      2      3      4      5		
Obtaining client services, placement & visitation	1      2      3      4      5		
Motion practice	1      2      3      4      5		
Working with experts	1      2      3      4      5		

Legal Practice Area	Please rate your knowledge and skills in each of these areas between 1 and 5 with 1 - no knowledge or skills 5 - proficient in this area	Please identify any areas of particular strength	Please identify any particular areas you would like to improve your skills or knowledge
Interlocutory appeals	1      2      3      4      5		
Representing clients at permanency hearings	1      2      3      4      5		
Negotiation & settlement	1      2      3      4      5		
Trial preparation	1      2      3      4      5		
Trial advocacy	1      2      3      4      5		

Legal Practice Area	Please rate your knowledge and skills in each of these areas between 1 and 5 with 1 - no knowledge or skills 5 - proficient in this area	Please identify any areas of particular strength	Please identify any particular areas you would like to improve your skills or knowledge
Oral advocacy	1      2      3      4      5		
Written advocacy	1      2      3      4      5		
Preserving client's appellate rights	1      2      3      4      5		
Obtaining post-judgment relief (including post judgment statutory reviews under G.L. c. 119)	1      2      3      4      5		
Business Basics (organizing office, files, calendaring, billing)	1      2      3      4      5		

## Self Assessment - Legal Knowledge

Mentee Name: \_\_\_\_\_

Legal Practice Area	Please rate your knowledge and skills in each of these areas between 1 and 5 with 1 - no knowledge or skills 5 - proficient in this area	Please identify any areas of particular strength	Please identify any particular areas you would like to improve your skills or knowledge
Knowledge of basic constitutional principles governing state intervention in the family	1      2      3      4      5		
Working knowledge of G.L c. 119 and c. 210, governing care and protection, CRA and termination of parental rights cases	1      2      3      4      5		
Knowledge of DCF administrative structure, regulations, policies and procedures	1      2      3      4      5		
Knowledge of rules of procedure and court rules applicable to state intervention cases in Juvenile and Probate Court	1      2      3      4      5		

Legal Practice Area	Please rate your knowledge and skills in each of these areas between 1 and 5 with 1 - no knowledge or skills 5 - proficient in this area	Please identify any areas of particular strength	Please identify any particular areas you would like to improve your skills or knowledge
Understanding of legal standards that apply at various stages of care and protection, CRA and termination of parental rights cases	1      2      3      4      5		
Knowledge of statutory and common law rules of evidence applicable in state intervention cases	1      2      3      4      5		
Knowledge of federal and state rules governing privileges and confidentiality	1      2      3      4      5		
Understanding of ethical rules governing attorney practice (e.g., conflicts, attorney-client confidentiality, communicating with parties)	1      2      3      4      5		
Medical & clinical knowledge relevant in these cases (e.g., domestic violence, substance abuse, child development, mental illness; physical &	1      2      3      4      5		

<b>Legal Practice Area</b>	<b>Please rate your knowledge and skills in each of these areas between 1 and 5 with 1 - no knowledge or skills 5 - proficient in this area</b>	<b>Please identify any areas of particular strength</b>	<b>Please identify any particular areas you would like to improve your skills or knowledge</b>
<b>sexual abuse</b>			
<b>Understanding of education law including special education and student discipline</b>	1      2      3      4      5		
<b>Knowledge of services available for parent and child clients</b>	1      2      3      4      5		
<b>Understanding of law and procedure to obtain judicial consent for extraordinary medical treatment for child in DCF custody</b>	1      2      3      4      5		
<b>Understanding of different cultures and the impact of particular cultural issues on state intervention cases</b>	1      2      3      4      5		





## APPENDIX C

### Mentoring Styles\*

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Mentors provide different levels of support to mentees depending upon the individual's readiness level to perform particular tasks or take on particular responsibilities.

<b>MR</b> -----	<b>MR/me</b> -----	<b>MR/ME</b> -----	<b>mr/ME</b>
Directive	Guiding	Collaborative	Confirming
Style 1	Style 2	Style 3	Style 4

<b>Style 1</b> <b>Directive</b>	<b>Style 2</b> <b>Guiding</b>
<b>Style 4</b> <b>Confirming</b>	<b>Style 3</b> <b>Collaborative</b>

\* Adapted from William A. Gray, Mentor-Protégé Relationship Model (1984)

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## Definitions for Mentoring Styles

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**Style 1: Directive Mentoring Style** - is appropriate when ME needs a lot of information and direction to handle unfamiliar or highly crucial situation where mistakes must not be made:

- MR Self-Discloses how he/she (mis)handled a situation similar to ME's – to impart subtle lessons about what works.
- MR Describes how the ME's colleagues (mis)handled a similar situation to impart subtle lessons about what works.
- MR Teaches important concepts and principles so ME understands what to do and why.
- MR Explains important do's and don'ts, procedures, policies, customs, unwritten rules.
- MR Praises ME's behaviors to provide positive feedback and to motivate these behaviors reoccurring.
- MR Advises (gives wise counsel on) what he/she would do in a situation like the ME's.

**Style 2: Guiding Mentoring Style** - is appropriate for mentees who have some experience and ability to handle a particular situation but need mentor guidance to be successful or to avoid making mistakes:

- MR Suggests what ME could do (options to consider in implementing, but not imposing in any way).
- MR Confronts what ME does or says to bring to awareness (does not confront the ME personally).
- MR Persuades or convinces ME to employ a particular suggestion, or think in new way (new perspective).
- MR Coaches acquisition and development of new skills (demonstrates or models these behaviors).
- MR Asks Leading Questions to guide ME's thinking in a certain direction or influence a new perspective.
- MR Probes (via comments/questions) to get ME to think more deeply – instead of reacting emotionally to a situation.
- MR Gently Pushes ME to initiate action when ME is capable but reluctant to do so.

**Style 3: Collaborative Mentoring Style** - represents a Transition Point midway between mentee's dependence on mentor's wise counsel and being capable of handling difficult situations independently. This style is appropriate for mentees with enough experience and ability to work collaboratively with the mentor.

- MR & ME Two-Way Dialogue.
- MR & ME Jointly Contribute ideas.
- MR & ME Collaborate to solve problems.

**Style 4: Confirming Mentoring Style** - empowers mentees to take more initiative and responsibility to handle situations. A highly capable mentee just needs mentor confirmation to achieve success:

- MR is Sounding Board for ME's ideas and plans. (MR listens silently and acknowledges what ME communicates).
- MR Paraphrases (listens and reflects back) ME's ideas and feelings.
- MR Summarizes (listens/reflects back) key points ME communicates so MR & ME identify and keep track of them.
- MR Clarifies ME's ideas, decisions, and action plans when these are unrealistic or vague.
- MR Encourages ME's ideas that are likely to succeed.
- MR Affirms ME's competencies.



## **APPENDIX D**

### **What is a Professional Development Plan?**

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A Professional Development Plan (PDP) is a relatively simple document that records a mentee's short- and long-term goals, how these goals will be attained, what resources or other support will be needed, and a time-frame by which the mentee will attain these goals.

#### **Elements of a Professional Development Plan**

- Effective PDPs are working documents through which a mentor and mentee together chart a course of action to help the mentee achieve both short- and long-term goals.
- By setting goals, mentees are better able to focus on substantive and procedural knowledge and skills necessary to represent CAFL clients effectively. Goal-setting allows the mentee to identify and prioritize a limited number of areas to focus on at any one time, rather than being overwhelmed with the numerous areas of knowledge and skills that must be mastered. Goal-setting also helps the mentee to assess new situations and potential activities in light of how they might advance achievement of specified goals (e.g., accepting a new case or attending a particular education program). It also provides a target by which mentee progress can be measured.

#### **Assessing mentee's incoming knowledge and skills**

- Professional development goals are set in relation to the identified areas of knowledge and skill that attorneys need to represent CAFL clients effectively.
- Mentors and mentees should begin by reviewing the CAFL Performance Standards as well as the "Competencies Checklist."
- The mentee then self-identifies areas of strength and areas in need of further support and development.
- The mentor helps the mentee identify additional areas of strength and need and then helps the mentee prioritize which areas to work on first.

#### **Other sources of information useful in assessing incoming knowledge and skills**

- The mentee's CAFL application.
- The mentee's writing sample.
- Feedback from instructors at the CAFL Trial Panel Training.
- Feedback from others who have observed the mentee in court.
- The mentor's observation of the mentee's performance at 72-hour hearings.
- The mentor's review of the mentee's written work (e.g., pleadings, motions, memos, etc.).
- The mentor's review of the mentee's case files.

### Identifying goals

- A PDP should be limited to relatively few goals, although the exact number will vary depending on the mentee's needs, motivation and experience level, as well as the mentor's recommendations and expectations.
- Short-term goals include one or more competencies to be developed, enhanced, or improved within a specified period, typically the next several months.
- The goals will reflect the mentee's needs and interests, as well as the issues presented by the mentee's CAFL cases.

### Developing Action Steps and Timeframes

- Professional development goals are only as good as their associated action steps.
- Action steps refer to the specific ways the mentee will master new content or skills.
- Learning activities might include participating in CAFL-sponsored or other training, observing the mentor or other lawyer in court or in client meetings, having the mentor observe the mentee and provide specific feedback and coaching.
- The plan should also include specific timeframes for completing each step and accomplishing the goal.

### Developing SMART Goals

Professional Development Goals should be:

- **S**pecific
- **M**easurable
- **A**chievable
- **R**ealistic
- **T**imely

## APPENDIX E

### Sample Professional Development Plan

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Name: \_\_\_\_\_

Advisor/Mentor: \_\_\_\_\_

Time period covered: Jan 1 - Feb 28, 2018

#### ACTION PLAN

##### Goal A:

Goal	Action Steps	Timeline	Resources Needed
Understand rules governing admission of court investigator's report and draft motion in limine to exclude portions of report	<ul style="list-style-type: none"><li>• Review evidence and court investigator chapters from CAFL manual</li><li>• Review key cases (e.g., Michel, Carla, Leo, Astrid)</li><li>• Review sample motions in limine</li><li>• Review court investigator report in a case and draft motion in limine for mentor review</li></ul>	<ul style="list-style-type: none"><li>• 1/10/18</li><li>• 1/10/18</li><li>• 1/10/18</li><li>• 1/17/18</li></ul>	<ul style="list-style-type: none"><li>• CAFL Manual</li><li>• Case Law</li><li>• Sample motions</li></ul>

##### Goal B:

Goal	Action Steps	Timeframe	Resources Needed
Understand legal standard for judicial review of DCF custodial decisions and draft motions in appropriate case	<ul style="list-style-type: none"><li>• Review chapter in CAFL manual on services, visitation and placement</li><li>• Review relevant cases (e.g., Isaac, Jeremy)</li><li>• Discuss with mentor appropriateness of motions in 1 or 2 cases</li><li>• Review sample motions</li><li>• Draft motion and supporting affidavits for mentor review</li></ul>	<ul style="list-style-type: none"><li>• 1/25/18</li><li>• 1/25/18</li><li>• 1/25/18</li><li>• 1/31/18</li><li>• 2/14/18</li></ul>	<ul style="list-style-type: none"><li>• CAFL Manual</li><li>• Case law</li><li>• Sample motions</li></ul>

**Goal C:**

<b>Goal</b>	<b>Action Steps</b>	<b>Timeframe</b>	<b>Resources Needed</b>
Develop system for organizing case files and create calendar system	<ul style="list-style-type: none"><li>• Review Mentor's system for organizing case file and calendar</li><li>• Discuss case file and calendaring systems with colleagues</li><li>• Organize file for new cases and review with mentor</li><li>• Develop calendar system and review with mentor</li></ul>	<ul style="list-style-type: none"><li>• 1/25/18</li><li>• 1/25/18</li><li>• 2/14/18</li><li>• 2/14/18</li></ul>	<ul style="list-style-type: none"><li>• Sample case file from mentor</li><li>• Mentor's calendaring system</li></ul>



## APPENDIX F

### Professional Development Plan

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Name: \_\_\_\_\_

Advisor/Mentor: \_\_\_\_\_ Time period covered: \_\_\_\_\_

#### ACTION PLAN

##### Goal A:

Goal	Action Steps	Timeline	Resources Needed

##### Goal B:

Goal	Action Steps	Timeline	Resources Needed

Goal C:

Goal	Action Steps	Timeline	Resources Needed

## APPENDIX G

### Giving & Receiving Feedback

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Giving and receiving feedback are two of the most important skills in the mentoring role. If done well it can help to develop an open and trusting relationship which benefits both parties. If done badly or not at all it encourages attacking and defensive behavior and causes people to take up positions from which it is then difficult to move them.

The three main forms of feedback are:

1. **Summarizing:** allows thought collection on both sides, develops control, allows for objections and misunderstandings to be clarified:

*Let me summarize our discussion so far.*

*Let me summarize what I have just said.*

2. **Clarifying:** demonstrates your good intentions, should show that you are listening, shows interest and allows for correction:

*Would I be right in thinking that...?*

*What you seem to be saying is...?*

*Do you therefore feel that...?*

3. **Interpreting:** trying to express what you think the other person is trying to say or express the feelings that lie behind the facts:

*Would it be true to say that you do not get on well with X?*

**1. Differentiating between facts and emotions:** It is important to differentiate between your own feelings on the matter and the facts. If your own feelings have been aroused it is possible that you will allow these to obscure the facts. As a result you start becoming parental, using words like "must" and "should have." This has an effect on your listener, who may then exhibit a defensive behavior.

**2. Positive and negative feedback:** Feedback is either positive or negative but it must be constructive. For this you need to use evidence to support your case and then together suggest how you can either build on good behavior or improve bad behavior.

**3. Giving feedback:** When structuring your feedback sessions, try the following:

- **Start-up:**
  - Set comfortable tone; begin with something positive (if possible)
- **Context:**
  - State problem/issue succinctly: why it is a problem; with specific factual description; what the impact is of mentee's action/inaction regarding the problem
  - Focus on critiquing the performance, not the person
- **Dialogue:**
  - Invite comments/questions - does mentee see the situation differently?
- **Problem-solving:**
  - Invite mentee to suggest steps to take to address problem, make improvements
  - Offer suggested steps for improvement
  - Reach agreement on steps
- **Confirm agreements:**
  - Including who will do what, by when
  - Express continued confidence in the mentee

**4. Receiving feedback:** When on the receiving end of feedback, adopt the following behaviors:

- Listen to what is being said without arguing or interrupting no matter how much you disagree.
- Make sure you understand by clarifying information rather than making assumptions.
- Use your peer group to check out the information you are being given, especially if you have doubts.

## **APPENDIX H**

### **Giving Advice . . . one of the important components of mentoring**

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It is easy for a mentor to fall into the trap of having all the answers. Dispensing information is often required; it's quick and easy and may make you feel good about yourself as a mentor. But if you only give advice, much of it fails to stick.

The balancing act involves coaching your mentee to discover insight on her/his own and also to give advice when you believe it is most needed.

#### **Suggestions for Giving Advice**

- Give advice only when your mentee has done some preliminary thinking on his/her own, and only after you have listened carefully and thoroughly understand the issue at hand. Don't jump at the chance to provide your insight too early in the conversation.
- Don't give advice only when your mentee sees you as the "answer person" who has the golden piece of information. You both may get very used to the idea of his/her asking and you answering.
- Give advice when your mentee ask for and needs it. One of the most frustrating mentor responses to the question, "What do you think I should do?" is, "What do you think you should do?" It often feels manipulative to the mentee; you apparently have an opinion but for the sake of mentoring, you are withholding it.
- Provide direction and give advice when your mentee is stuck. Then ask: "How do you think my advice would apply to your situation?" The goal is for the mentee to make the outcome his/her own. Your advice is meant only to get him/her "unstuck."
- Try telling a story which is a relevant example from your career or lifetime experience. You may feel that telling a story would be interesting and appropriate and that it would help illustrate a possible path for the mentee.

Handled well, giving of advice can be your most appropriate mentoring action!

No longer based on the leader-follower hierarchy, mentoring is becoming a two-way relationship where both parties learn, share, question, challenge, and change. The foundation of these growth- enhancing activities is a relationship of mutual trust.

Trust can be built in some or all of the following five key areas:

- **Commonality:** we seek the common ground of shared experience as a first step in understanding one another and as a basis for communication. This could include common background, interests, opinions, values, people, or goals.
- **Concern:** there must be an honest commitment to and interest in the other person. This is best demonstrated by devoting time and by being a sincere, active listener.
- **Consistency:** this means being dependable in who we are and what we do. It can be experienced within the mentoring relationship and also observed in dealings with others.
- **Competence:** individual skills and gifts are identified, evaluated and shared with each other. Synergy is developed through sharing insights and new ideas. Individual egos are put aside as help is freely requested and given.
- **Confidentiality:** respect for confidentiality must be given while maintaining a careful balance with individual values. These expectations must be established early in the relationship and reestablished as situations present themselves. Define clear boundaries, since it can be difficult to recover from failure to deliver on expectations

Resist the temptation to project your own feelings about similar experiences on your mentee.

- Don't try to solve problems for the mentee.
- Help him/her develop alternative solutions with strengths and weaknesses of each.

Being an effective listener means listening non-defensively:

- Having a willingness to hear what you might not like
- Not rejecting other's ideas just because you disagree with them
- Trying to grasp how ideas make sense to someone else even when they don't to you
- Resisting the urge to talk or interrupt the speaker
- Not debating the speaker silently in your mind while he/she is talking
- Believing there is usually more than one way of looking at things
- Believing there are far fewer "facts" and far more uncertainties and questions to be explored
- Valuing the exchange of ideas more than ideas themselves
- Knowing that if you don't listen, further communication is rather futile
- Use "empathy not sympathy", when listening to your mentee. Sympathy is essentially comparing your experience with another's: "Yes, I felt that way, too, and let me tell you about it . . ." Empathy means "walking in another's shoes," going with their thinking and feeling in a nonjudgmental way. In demonstrating true empathy, you have to get your own ego out of the way; you may have to listen to ideas or feelings that you do not agree with.

### **1. First of all, what do we mean by "listening"?**

- It is more than just hearing, which is only the first part of listening, the physical part when your ears sense sound-waves.
- There are three other parts that are equally important. There is the interpretation of what was heard that leads to understanding or misunderstanding.
- Then comes the evaluation stage when you weigh the information and decide how you will use it.

Finally, based on what you heard and how you evaluated it, you react. That is listening.

### **2. Before we can become good listeners, it helps to know why people talk to each other.**

There are four basic types of verbal communication.

- There is the "getting-to-know-you" or the "building of relationships" kind of talk which is called phatic communication.
- Next, there is cathartic communication which allows the release of pent-up emotion and often amounts to one person spilling his or her troubles on concerned, caring ears.
- Then there is informative communication in which ideas, data, or information is shared.
- Last of all is persuasive communication where the purpose is to reinforce or change attitudes or to produce action.

### **3. Listening is our primary communication activity.**

Studies show that we spend about 80% of our waking hours communicating. And, according to research, at least 45% of that time is spent listening. In schools, students spend 60-70% of their classroom time engaged in listening. And, in business, listening has often been cited as being the most critical managerial skill.

### **4. Most individuals are inefficient listeners.**

Tests have shown that immediately after listening to a ten-minute oral presentation, the average listener has heard, understood, properly evaluated, and retained approximately half of what was said. And, within 48 hours, that drops off another 50% to a final 25% level of effectiveness. In other words, we quite often comprehend and retain only one-quarter of what is said.

### **5. Some of the benefits of good listening:**

- Encourages the speaker
- Promotes trust and respect



- Enables listener to gain information
- Improves relationships
- Makes resolution of problems more likely
- Gains cooperation
- Promotes better understanding of people

#### 6. Ten Keys to Effective Listening:

The good listener	Key to effective listening	The ineffective listener
Tunes out dry subjects	Find areas of interest	Opportunist: Asks "What's in it for me?"
Judges content; skips over delivery errors	Judge content, not delivery	Tunes out if delivery is poor
Does not judge until comprehension complete	Hold your fire	Tends to enter into argument
Listens for ideas		
Listens for facts		
Listens for central themes	Listen for ideas, facts, themes	
Takes intensive notes		
Uses 4-5 different systems, depending on the speaker	Be flexible	Takes fewer notes
Uses only one system		
Works hard, exhibits active body state	Work at listening	Shows no energy output; Attention is faked
Fights or avoids distractions, tolerates bad habits, knows how to concentrate	Resist distractions	Distracted easily
Uses heavier material as exercise for the mind	Exercise your mind	Resists difficult expository material
Interprets emotional words; does not get hung up on them	Keep your mind open	Reacts to emotional words



## APPENDIX I

### *Committee for Public Counsel Services Children and Family Law Division*

*44 Bromfield Street  
Boston, Massachusetts 02108  
Phone: (617) 482-6212, Fax: (617) 988-8455*

#### **INITIAL MENTOR MEETING CERTIFICATION**

Attention: Rita Caso

I, \_\_\_\_\_, have met with my mentor,

\_\_\_\_\_, on \_\_\_\_\_.

\_\_\_\_\_  
[mentee]

\_\_\_\_\_  
[mentor]

Please scan and email to [rcaso@publiccounsel.net](mailto:rcaso@publiccounsel.net), or mail to the above address.



## APPENDIX J

### Sample Opening Memo

**Client:** Susan C. (Mother), D.O.B. 11/8/71  
**Address:**  
**Phone:**  
**Case Name:** C&P of John and Calvin R.  
**Court:** Brockton Juvenile Court  
**Assigned:** May 6, 2005  
**Temporary Custody Hearing:** May 18, 2005  
**Other Parties/Counsel:** Sergio R. (father)/David Cavanaugh; John and Calvin R. (children)/Mary Connors; DCF/Mark G.

---

Brockton DCF removed both children on May 5 following a supported 51B for DV, drug use, and other neglect. Client did a urine screen at DCF's request and it was positive for cocaine. Father got arrested for DV charges after incident over weekend at client's home. He broke into the home late at night after client refused to answer the phone, and refused to leave, so client called the police. Both children were home. Older child, William, was at his father's house (different father) and father recently got custody through Probate Court so he's not named on petition.

In addition to drug use and DV, DCF claims client has been having sexual relationship with 17-year-old son of a friend who lives nearby, named Julio. Client denies it but admits to Julio being at her house a lot, supposedly to help with household chores, baby sit, run errands, etc. He has prior DYS involvement, of which client was aware. William has made several statements to his father and to DCF investigator about seeing client and Julio together in bed. Mother and father have had on and off relationship for several years and father was allegedly drunk and very mad about Julio when he broke into the house that night – Julio apparently was not there that night. He has no first-hand knowledge of the situation with Julio but had heard rumors. There is talk of possible statutory rape charges against client because of her involvement with Julio, which allegedly began over a year ago.

Client got licensed for in-home day care last year and has been caring for up to 5 children for the last several months. Her license has been temporarily suspended because of all of this. She has no present source of income. The home belongs to father, which he inherited from his parents. Other than the recent DV client and father have been on good terms; they agreed that client would remain in the home because of the children but the plan is to sell the home and split the proceeds (?).

DCF placed the children with client's sister, Cheri G., in Plymouth. DCF is unwilling to consider a return of custody to either parent. Father works full time so he can't really assume custody, and he wants custody to return to client. Client wants to regain custody. She doesn't know if any of her family members are willing to assume custody.

Client has no prior DCF involvement and a minor criminal record (a couple of car insurance-related charges from the mid-90's). She has gotten 2 209A's against the father in the past but didn't renew either 1; the most recent was 2 years ago. She doesn't feel she needs 1 now but will get 1 if it helps her case. She states that she voluntarily sought help for what she calls a temporary addiction to prescription painkillers earlier this year. She successfully completed a treatment program in Brockton (not information yet on that).

There are several issues to investigate further prior to proceeding with the 72 hour hearing:

- what is status of any criminal investigation against client and/or possibility of charges for statutory rape?
- is Julio stating that they had sexual relationship? what kind of witness will he make?
- is there other evidence of client's drug use?
- does client's sister want temporary custody and/or are there other relatives who can come forward?
- does client plan to get 209A/does she need to get 209A?

**To Do:**

1. Talk with police officers who responded to client's home that night
2. Find out who DCF intends to call as witnesses
3. Motion in limine on 51A/B, police report
4. Talk with Julio
5. Talk with client's sister and/or other relatives
6. Talk with children's and father's attorneys
7. Get client's substance abuse treatment records

## APPENDIX K

### Sample Case Status List

#### C&P CASES

#### CHILD CLIENTS NAME

OPENED

COURT

STATUS

NEXT DATE

NOTES

Douglas

9/30/2004

Worcester

pre-adjud

5/27/05 PTC

baby; mom arrested, lacks stable housing; not sure if visits going well

Foster

4/17/2004

Worcester

post-adjud

11/21/05  
R&R

DCF cust, paternal aunt is adoptive resource; DCF to reduce visits from weekly; AOD motion re: adoption subsidy prior to trial?

Bonds

10/1/2003

Worcester

post-adjud

11/20/05  
review

perm DCF cust, almost, slightly retarded, likes placement; long term sub care, maybe do voluntary at 18 until graduates high school

Rodrigues

8/28/2003

Fitchburg

TPR

10/9/05 trial  
as to father

limited post-TPR contact; keep open for monitoring until finalization

#### PARENT CLIENTS

Bird (father)

10/21/2004

Worcester

pre-adjud

8/21/05 PTC

newborn baby + for drugs; not together w/ mom, has own place in RI; not sure if getting visits, not sure if has service plan

Smith Bronson  
(Mother)

8/25/2004

Worcester

pre-adjud

7/12/05 PTC

kid doing well with aunt; mom doing little, occasional therapy, AA mtgs.; living in motel; boyfriend is bad guy

Garita (mother)	6/27/2004	Worcester	pre-adjud	5/31/05 trial	mom has drug problem; not in treatment yet, EA app. denied, maybe appeal that; DCF may change goal to adoption; AOD mot for DCF' failure to help get in program?
Mancini (father)	11/29/2003	Worcester	post-adjud	8/8/05 PTC	kids in perm DCF cust, client in MCI no interest in child, nothing to do on case; has 2d C&P on other child, Neal will be taking over that case; will propose PGM as placement

**CHINS CASES**

<b>CLIENT NAME, D.O.B.</b>	<b>ASSIGNED</b>	<b>TYPE</b>	<b>PETITIONER</b>	<b>STATUS</b>	<b>NEXT DATE</b>	<b>CUSTODY</b>
Hinson, 4/21/1992		truancy	school	pre-adjud.	7/4/05 (trial)	mother
Farris, 6/17/1990		stubborn	mother	post-adjud.	8/5/05 (report)	DCF



## APPENDIX L

### COMMITTEE FOR PUBLIC COUNSEL SERVICES CHILDREN AND FAMILY LAW DIVISION

#### **Requirements for Graduation from the CAFL Trial Panel Mentoring Program**

To graduate from the mentoring program, the attorney must demonstrate proficiency in each of the following categories:

1. **Understand the substantive law of care and protection, CRA and termination of parental rights cases, including the relevant statutes, case law, regulations and court rules.** Does the attorney understand how the case is going to progress? Does (s)he know what the standards and burdens of proof are at each stage? Does (s)he know what options are available at each stage? Does (s)he know what forms of relief are available at a given time in the case and how to seek them?
2. **Basic organization.** Is the attorney able to maintain case files in an organized fashion? Is (s)he able to bill properly, keep up with insurance and CLE requirements, and otherwise comply with CPCS administrative requirements? Is (s)he reasonably available and responsive via telephone, mail, email, fax? Does (s)he show up when and where (s)he is supposed to for court and other appointments? Can (s)he maintain an appropriate caseload?
3. **Writing and research.** Is the attorney able to conduct legal research? Is (s)he a reasonably capable legal writer? Does (s)he conduct research and/or draft and file pleadings when (s)he should? Does (s)he know the important legal precedents?
4. **Establish and maintain effective working relationship with clients.** Does the attorney keep in contact with clients, or make reasonable efforts to keep in contact with clients? Does (s)he clearly articulate the attorney's role, status of the case, anticipated next steps, legal strategy, short and long-term goals, etc.? Does (s)he answer the client's questions appropriately? Does the attorney show an ability to relate to clients of different backgrounds? Do her/his own biases and prejudices hinder her/his ability to represent certain kinds of clients? For child clients, is (s)he able to interact with clients of different ages, abilities, etc.? Does (s)he identify and respond appropriately to conflicts of interest among clients?
5. **Zealous advocacy on behalf of client.** Is the attorney a zealous advocate for the client? Does (s)he file motions? Does (s)he hire experts? Does (s)he protect the clients rights to due process, privilege and confidentiality? Is (s)he willing to challenge DCF, GALs, court investigators, experts, judges? Is (s)he an effective negotiator? Does (s)he consistently comply with the CAFL performance standards?

6. **Determine and advocate for the child client's position.** Does the attorney determine and advocate for the child client's position in accordance with the CAFL performance standards? Is the attorney an independent advocate for the child or is (s)he a rubber stamp for DCF or the parents? Does (s)he pursue alternate forms of relief on behalf of child clients (e.g., propose alternate custodians)?
7. **Professionalism.** Does the attorney conduct herself/himself in a professional manner in court, in meetings, with clients, with opposing counsel, with service providers? Does (s)he maintain proper boundaries?
8. **Trial preparation and conduct.** Does the attorney understand the rules governing the admission of evidence? Is the attorney reasonably able to introduce and prevent introduction of evidence? Is (s)he capable of delivering persuasive legal arguments? Is (s)he able to maintain composure in contested proceedings? Is (s)he willing and able to prepare properly for trial? Is (s)he afraid of going to trial?
9. **Strategic legal thinking.** Is the attorney able to develop legal strategy for accomplishing the client's goals? Does (s)he show any creativity? Is (s)he able to formulate a theory of a case? Does (s)he display initiative for problem solving on her/his own prior to seeking assistance from the mentor?
10. **Understanding of clinical and medical issues.** Does the attorney make an effort to educate herself/himself on clinical and medical issues as presented by her/his cases (e.g., domestic violence, substance abuse, mental illness, physical and sexual abuse)? Does (s)he display an ability to understand the various issues clients might have and how that affects their interaction with the attorney?

**COMMITTEE FOR PUBLIC COUNSEL SERVICES  
CHILDREN AND FAMILY LAW DIVISION**

**Recommendation for Graduation from the CAFL Trial Panel Mentoring Program**

**Mentee:** \_\_\_\_\_

**Mentor:** \_\_\_\_\_

I recommend that Attorney \_\_\_\_\_ graduate from the CAFL Trial Panel Mentoring Program. She/he demonstrates proficiency in each of the following categories (check all that apply):

1. **Understand the substantive law of care and protection, CRA and termination of parental rights cases, including the relevant statutes, case law, regulations and court rules.** \_\_\_\_\_
2. **Basic organization.** \_\_\_\_\_
3. **Writing and research.** \_\_\_\_\_
4. **Establish and maintain effective working relationship with clients.** \_\_\_\_\_
5. **Zealous advocacy on behalf of client.** \_\_\_\_\_
6. **Determine and advocate for the child client's position.** \_\_\_\_\_
7. **Professionalism.** \_\_\_\_\_
8. **Trial preparation and conduct.** \_\_\_\_\_
9. **Strategic legal thinking.** \_\_\_\_\_
10. **Understanding of clinical and medical issues.** \_\_\_\_\_

**Comments (optional):**

By signing below, I \_\_\_\_\_ (mentor) certify that I have observed this mentee participate in at least one contested evidentiary hearing.

\_\_\_\_\_  
Signature of Mentor

\_\_\_\_\_  
Date

**For Office Use Only**

Date of attendance at 2-day Training \_\_\_\_\_

Date of attendance at Rogers Training \_\_\_\_\_

\_\_\_\_\_  
Approved by Trial Support Unit Attorney

\_\_\_\_\_  
Date

**COMMITTEE FOR PUBLIC COUNSEL SERVICES  
CHILDREN AND FAMILY LAW DIVISION**

**Recommendation for Graduation from the CRA Mentoring Program**

**Mentee:** \_\_\_\_\_

**Mentor:** \_\_\_\_\_

I recommend that Attorney \_\_\_\_\_ graduate from the CAFL CRA Mentoring Program. She/he demonstrates proficiency in each of the following categories (check all that apply):

1. **Understand the substantive law of Children Requiring Assistance cases, including the relevant statutes, case law, regulations and court rules.** \_\_\_\_\_
2. **Basic organization.** \_\_\_\_\_
3. **Establish and maintain effective working relationship with clients.** \_\_\_\_\_
4. **Zealous advocacy on behalf of client.** \_\_\_\_\_
5. **Determine and advocate for the child client's position.** \_\_\_\_\_
6. **Professionalism.** \_\_\_\_\_
7. **Understanding of clinical / medical / educational issues.** \_\_\_\_\_

**Comments (optional):**

By signing below, I \_\_\_\_\_ (mentor) certify that I have observed this mentee appear before the court.

\_\_\_\_\_  
Signature of Mentor

\_\_\_\_\_  
Date

**For Office Use Only**

\_\_\_\_\_  
Approved by Trial Support Unit Attorney

\_\_\_\_\_  
Date

## APPENDIX N

### 2. PERFORMANCE STANDARDS GOVERNING THE REPRESENTATION OF CHILDREN AND PARENTS IN CHILD WELFARE CASES<sup>1</sup>

#### SUMMARY OF CONTENTS

##### **1. GENERAL PRINCIPLES OF REPRESENTATION**

- 1.1 ROLE OF COUNSEL
- 1.2 APPOINTMENT OF COUNSEL
- 1.3 SCOPE OF REPRESENTATION
- 1.4 CONFLICTS OF INTEREST
- 1.5 COMMUNICATIONS WITH CLIENT
- 1.6 DETERMINING AND ADVOCATING THE CHILD CLIENT'S POSITION
- 1.7 DETERMINING AND ADVOCATING AN ADULT CLIENT'S POSITION
- 1.8 PROTECTION OF CONFIDENTIALITY, PRIVILEGED COMMUNICATIONS, AND ATTORNEY WORK PRODUCT
- 1.9 MISSING PARENT CLIENTS

##### **2. TEMPORARY CUSTODY (INCLUDING 72-HOUR) HEARINGS**

- 2.1 RIGHT TO HEARING
- 2.2 PREPARATION FOR HEARING
- 2.3 CONDUCT OF HEARING

##### **3. INVESTIGATION AND DISCOVERY**

- 3.1 INFORMAL DISCOVERY
- 3.2 FORMAL DISCOVERY

##### **4. SEEKING CLIENT OBJECTIVES**

- 4.1 OBTAINING SERVICES FOR THE CLIENT AND HIS OR HER FAMILY
- 4.2 VISITATION
- 4.3 CUSTODY AND PLACEMENT
- 4.4 COMMUNICATING WITH THE COURT INVESTIGATOR/GUARDIAN AD LITEM
- 4.5 FILING PLEADINGS
- 4.6 INTERLOCUTORY APPEALS
- 4.7 EXPERTS

##### **5. PERMANENCY HEARINGS**

- 5.1 RIGHT TO HEARING
- 5.2 PREPARATION FOR HEARING
- 5.3 CONDUCT OF HEARING
- 5.4 APPEAL

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<sup>1</sup> These Performance Standards apply to the representation of children and parents in care and protection proceedings, proceedings under G.L. c. 119, § 23C and proceedings to dispense with consent, as well as divorce, custody, guardianship and other proceedings in which a right to counsel exists. These standards do not apply to the representation of children in Children in Need of Services (CHINS) proceedings, pursuant to G.L. c. 119, § 39G.

## **6. TRIAL PREPARATION AND CONDUCT**

### **6.1 TRIAL PREPARATION**

### **6.2 TRIAL CONDUCT**

## **7. SETTLEMENT**

## **8. POST-JUDGMENT REPRESENTATION**

### **8.1 APPEALS**

### **8.2 POST-JUDGMENT HEARINGS, REVIEWS AND MOTIONS**

### **8.3 CESSATION OF REPRESENTATION**

## **1. GENERAL PRINCIPLES OF REPRESENTATION**

### **1.1 Role of Counsel.**

(a) The role of counsel in these cases is to be an advocate for the client within the scope of counsel's appointment. Counsel shall diligently and zealously protect and advance the client's interests, rights and goals in the proceedings. This involves explaining the nature of all legal and administrative proceedings to the extent possible given the client's age and ability, determining the client's position and goals, and vigorously advocating such position and goals. The role of counsel is also to ensure that the client is afforded due process and other rights and that the client's interests are protected.

(b) The role of counsel also is to be an advisor and counselor. This involves explaining the likelihood of achieving the client's goals and, where appropriate, identifying alternatives for the client's consideration. In addition, counsel should explain the risks, if any, inherent in the client's position.

(c) Counsel has an obligation to make available sufficient time, resources, knowledge and experience to afford competent representation to the client.

(d) Counsel for a child owes the same duties of undivided loyalty, confidentiality, zealous advocacy and competent representation to the child as is due an adult client, consistent with the Massachusetts Rules of Professional Conduct.

*Commentary:* The child's counsel should not be merely a fact-finder, but rather, should zealously advocate a position on behalf of the child. Regardless of any alignment of position among the child and other parties, child's counsel should develop his or her own theory and strategy of the case and ensure that the child has an independent voice in the proceedings. Although the child's position may overlap with the position of one or both parents, third-party caretakers or the Department of Social Services ("DSS"), child's counsel should be prepared to present his or her client's position independently and to participate fully in any proceedings.

When consistent with the client's interest, counsel should take every appropriate step to expedite the proceedings.

## 1.2 Appointment of Counsel

(a) Immediately upon acceptance of an appointment to represent a party, counsel shall, where required, file a notice of appearance with copies to all counsel and, where necessary or strategically important, an objection to the petition on the client's behalf.

(b) Counsel shall decline the assignment if (i) counsel is unable to afford the client prompt, diligent representation, (ii) acceptance of the assignment will create a conflict or potential conflict of interest, or (iii) counsel believes that he or she will not be able to comply with these Performance Standards. If counsel declines an assignment, counsel shall give proper notice to the court.

*Commentary:* Counsel cannot provide prompt, diligent representation of a client if (a) counsel is unable to begin working on the case promptly, or (b) counsel is unable to appear in court on an assigned date and cannot arrange a continuance that is consistent with the client's interests. It is counsel's responsibility to be aware of the caseload limits of the Committee for Public Counsel Services ("CPCS") found in the CPCS Manual for Assigned Counsel (2003). Counsel should not accept any assignment which will cause him or her to exceed these limits.

## 1.3 Scope of Representation.

(a) Duration of representation in general. Except as provided in par. (b), an assignment at the trial level concludes upon the earliest of the following:

1. The child is adopted.
2. The only subject child, or the client, has died.
3. Counsel has withdrawn for all purposes (not for purposes of obtaining appellate counsel).
4. The court has stricken counsel's appearance or the appearance of the client, and no appeal has been filed regarding such action.
5. The case is dismissed, and no appeal has been filed.
6. The court appoints a permanent guardian for the child, and no appeal has been filed.
7. The court grants permanent custody of the child to a person other than DCF, and no appeal has been filed.
8. If the client is a parent, a petition to terminate the client's parental rights has been allowed, and no appeal has been filed; however, if the client requests assistance to enforce any post-termination (but not post-adoption) agreement or order, or to defend against another party's request to modify or vacate such agreement or order, counsel shall provide such service.
9. The court enters an order not specified above that is intended by the court as a final disposition of the matter, and no appeal has been filed.
10. An appeal of an order under 4 through 9 above reaches its conclusion.

(b) Guardianship and permanent custody decrees and other orders disposing of a case.

In *Care and Protection of Thomasina*, 75 Mass. App. Ct. 563 (2009), the Appeals Court ruled that, unless the court enters an order terminating parental rights altogether, a child's parents retain certain rights in a care and protection case after the appointment of a permanent guardian for the child, including the right to review and redetermination and the right to counsel. If an order is entered under par. (a)6, (a)7, or (a)9, counsel for a parent or a child should:

1. Keep his or her Notice of Assignment of Counsel ("NAC") open if there is another court date scheduled or future litigation anticipated.
2. Close his or her NAC if there is no other court date scheduled and no future litigation anticipated. Before closing the NAC, counsel shall inform the client in writing of the rights that the client retains under *Thomasina*.

(c) Resumption of representation

1. If, after a NAC is closed under par. (b)2, counsel learns that the former client's residual rights under *Thomasina* are being compromised or challenged or are subject to further litigation, or that the former client wants to request further court review, counsel shall request that the NAC be reopened and shall resume representing the former client, unless subpar. 2 applies.
2. If counsel is no longer certified to represent CAFL clients or is otherwise unavailable to resume his or her representation of the former client, counsel shall promptly notify the court in writing and ask that certified counsel be appointed for the former client.

*Commentary:* Counsel should also be aware that a case is not considered concluded solely because there has been no recent court activity on the case.

Forms for requesting the reopening of a NAC are available on the CAFL website. Counsel withdrawing from a case should follow the rules set forth in Standard 8.3.

(d) Appointment of Appellate Counsel. The appointment of appellate counsel on behalf of a client shall not terminate trial counsel's ongoing responsibilities to the client in proceedings before the trial court.

(e) Collateral Representation. Clients occasionally require legal assistance in proceedings before the Probate and Family Court, District Court or Juvenile Court on matters other than, but integrally related to, that for which counsel was appointed. Such proceedings, which may arise prior or subsequent to the commencement of the proceeding for which counsel was appointed, include, but are not limited to, divorce, custody, guardianship and paternity proceedings. Counsel appointed to represent a client in one proceeding may, with CAFL written permission, bill CPCS for representation of a client in these types of collateral proceedings that (a) directly affect the resolution of an open proceeding for which counsel was appointed, and (b) concern the custody of child(ren) that is the subject(s) of the proceeding for which counsel was appointed. Counsel may, without notice to CAFL, represent a client at a Fair Hearing of the Department of Social Services which (a) directly affects the resolution of an open proceeding for which counsel was appointed, and (b) concerns the child(ren) that is the subject(s) of the proceeding for which counsel was appointed. CPCS reserves the right to deny payment for work done on collateral matters where permission was not requested or was refused.

Authorization for any collateral representation set forth herein ends at the earlier of (a) final judgment in the collateral matter, or (b) the occurrence of any event set forth in paragraph (a) "Duration" above. In no event will authorization be given for collateral representation in any matter which requires CPCS certification not held by counsel.



*Commentary:* In care and protection and § 23C proceedings, both children and parents are entitled to continued representation in post-trial matters, including foster care reviews, permanency hearings and review and redetermination proceedings. In actions to dispense with consent, the child is entitled to continued representation so long as he or she remains in the custody of DSS. Upon adoption or guardianship finalization, counsel's representation ends. There is no right to counsel in proceedings which are solely disputes between private parties, such as disagreements between birth parents and adoptive parents or guardians over post-adoption or post-guardianship visitation.

In the appropriate circumstance and upon a written request, CPCS will re-open a Notice of Assignment of Counsel ("NAC") to permit counsel to bill CPCS for representation of a client after the NAC has been closed. For example, counsel may file a motion seeking relief from judgment where sufficient grounds exist. Forms for requesting re-opening of a NAC are available on the CPCS CAFL website.

#### 1.4 Conflicts of Interest

Counsel must be alert to and avoid all potential and actual conflicts of interest that would impair the ability to represent a client. Particularly when appointed to represent multiple clients, counsel must be alert to the potential for conflicts of interest. The presence of a conflict may require counsel to withdraw from representing one, some or all of the clients. In such event, counsel shall request that the court appoint new counsel.

*Commentary:* Conflicts arise when an attorney is appointed to represent multiple siblings who have different positions (e.g., one child supports the petition and another child opposes the petition). Even though a court may find a parent fit as to one child but not another, counsel cannot, consistent with the ethical rules, simultaneously advocate a parent's fitness as to one child and unfitness as to another.

A conflict also may arise where an attorney is appointed to represent more than one parent. In situations where there are allegations of domestic violence, counsel should not represent both parents. Even in a case where multiple clients share the same position, a conflict may arise if counsel receives a confidence from one client that the client wishes not be disclosed, but disclosure would advance the interests of the other client. See Mass. R. Prof. C. 1.7, Comment 12C.

Counsel must be alert to the potential for conflict not only at the time of appointment but throughout the representation. A client's position may change as time passes, resulting in a conflict where none existed previously.

The Rules of Professional Conduct permit a lawyer to represent multiple clients, notwithstanding a conflict, if the lawyer reasonably believes to do so would not adversely affect the representation and if each client consents. See Mass. R. Prof. C. 1.7 and Comments. Rarely, if ever, would a situation arise where all the children are competent to consent and, therefore, as a general rule, counsel should always seek to withdraw from representing one or more child clients if a conflict exists among them. Counsel should be mindful of the conflict in continuing to represent any of the multiple clients when counsel holds confidences from some or all of the clients.

Counsel should also be cautious of the potential for conflict of interest in cases where the interests of the client are closely aligned with another, unrepresented person, (e.g., between a preadoptive parent or relative caretaker). Counsel should never agree to represent such other person. Child's counsel should also be aware of the conflict inherent in accepting any role other than counsel; for example, counsel should not act as a parent proxy in signing an Individualized Education Plan.

In accepting assignments, former DSS attorneys should be mindful of the rules regarding conflicts of interest and successive government and private employment. See Mass. R. Prof. C. 1.7-1.11.

Lawyers who practice separately in an office-sharing arrangement should similarly be mindful of the conflict of interest rules and other rules set forth in Commonwealth v. Allison, 434 Mass. 670 (2001), and other appellate cases.

### 1.5 Communications with Client

In all cases counsel must maintain sufficient contact with the client to establish and maintain an attorney-client relationship that will enable counsel to keep abreast of the client's interests and needs and of the client's position in the action.

(a) Immediately upon receipt of notice of the assignment, counsel shall take appropriate steps to locate his or her client. Counsel shall inform the client of the assignment and meet with the client as soon as practicable. To the extent possible, the initial meeting should take place sufficiently prior to the first court hearing to permit counsel to prepare for such hearing. As soon as practicable, and to the extent possible given the client's age and abilities, counsel shall explain to the client the nature of the court proceedings and applicable law, the role of counsel, and the existence of and limits to privileges covering the client's communications with counsel, therapists, social workers and other relevant individuals. Counsel shall also determine the client's interests, goals and position in the proceeding.

(b) At a minimum, counsel shall meet with a child client on a quarterly basis, except under extraordinary circumstances. Irrespective of a child client's age, counsel shall meet with the child client at his or her placement promptly upon receiving notice of the assignment. Counsel shall meet with the child thereafter as necessary to provide competent representation to the client, to be informed of the child's wishes and circumstances, to inform and advise the client about the proceedings, as appropriate, and to maintain an ongoing attorney-client relationship with the child.

*Commentary:* Establishing and maintaining a relationship with the child client is the foundation of representation. It is often more difficult to develop a relationship and trust with a child client than with a parent client. Meeting with the child regularly allows counsel to develop a relationship with the client and to assess the child's circumstances. The child's position, interests, needs and wishes change over time. Counsel cannot be fully informed of such changes without developing a relationship through frequent contacts.

Accordingly, counsel must meet with child clients at least quarterly. The extraordinary circumstances under which counsel may meet with a child client less than quarterly include situations where the child is "on the run" and his or her whereabouts are unknown, there is strong evidence that the child will be adversely affected by meeting with counsel, the child refuses to meet with counsel, or the child is placed at a distance that makes quarterly meetings impracticable. Counsel should meet with a child client immediately after becoming informed of a change in the child's placement. Counsel should be wary of communicating with child clients through letters or e-mail. Children may not receive such communications, or may not be the only ones to read such communications. This places the attorney's work product and attorney-client privilege at risk.

In order to provide competent representation, child's counsel should meet with the child in the child's environment to understand the child's personal context. The benefits of meeting with an older child who can convey information and express his or her wishes are obvious. However, meeting with younger children, including preverbal children, is equally important. Mass. R. Prof. C. 1.14 recognizes the value of the child client's input and further recognizes that varying degrees of input from children at different developmental stages may occur. In addition, preverbal children can provide valuable information about their needs through their behavior, including their interactions with their caretakers and other children or adults.

(c) Counsel shall remain in communication with the client during the course of the case to discuss, to the extent possible given the client's age and abilities, the progress of the case, trial strategy and preparation, negotiation and settlement strategies, and post-trial goals. Counsel shall inform the parent client of all court hearings and administrative proceedings and inform such client of his or her right and/or obligation to attend such hearings. Where appropriate given the child's age and abilities, counsel should inform the child client of court hearings and administrative proceedings. If the child client expresses a desire to attend a hearing, and such attendance is appropriate given the child's age and abilities and the nature of the proceedings, counsel shall take steps to assure the child's attendance. If the client is involuntarily committed or incarcerated and wishes to attend a hearing, counsel shall make all necessary arrangements for the court to issue a writ of habeas corpus to assure the client's presence at the hearing, and shall, if necessary, ensure service of the writ.

(d) Counsel shall explain the result of all court hearings and administrative proceedings to the client. If a final judgment is adverse to the client, counsel shall explain the client's right to appeal the decision, the appellate process, including the time limits in which a notice of appeal must be filed, and any alternative post-judgment strategy that may be appropriate. Counsel shall also explain the process and availability of post-trial reviews, if applicable. If a final judgment is not adverse to the client, counsel shall ensure that opponents adhere to time limits and discharge other appellate responsibilities until appellate counsel files an appearance. In communicating the results of court hearings and administrative proceedings to a child client, counsel shall provide such information as is appropriate given the child's age, abilities and wish to be so informed.

*Commentary:* Where counsel is unable to communicate effectively with the client because of either mental disability or language barriers, counsel should take whatever steps are necessary to ensure that he or she is able to communicate with the client and that the client understands the proceedings. Such steps may include obtaining expert assistance or an interpreter.

The lawyer has an obligation to explain clearly, precisely, and in terms the client can understand the meaning, implications and consequences of legal proceedings. A client may not understand the legal terminology and, for a variety of reasons, may choose a particular course of action without fully appreciating the implications. With a child the potential for misunderstanding may be even greater. Therefore, the child's attorney has additional obligations based on the child's age, level of education, and language skills. There is also the possibility that, because of a particular child's developmental limitations, counsel may not completely understand the child's responses. Therefore, child's counsel must learn how to ask developmentally appropriate questions and how to interpret the child's responses. The child's attorney may work with social workers or other professionals to assess a child's developmental abilities and to facilitate communication.

Counsel should contact clients regularly, and should respond promptly to telephone calls, letters and other inquiries from the client.

## 1.6 Determining and Advocating the Child Client's Position.

(a) Child's counsel should elicit the child's preferences in a developmentally appropriate manner, advise the child and provide guidance.

*Commentary:* Counsel has a duty to explain to the child in a developmentally appropriate way such information as will assist the child in having maximum input in determining his or her position. Counsel must be adept at asking developmentally appropriate questions and interpreting the child's responses in such a manner as to obtain a clear understanding of the child's preferences.

In eliciting the child's preferences, counsel should be aware of and understand the factors that influence the child's decision-making process. In addition to communicating with the child client as discussed in Standard 1.5 above, counsel should review records and consult with appropriate professionals and others with knowledge of the child. Counsel also may find it helpful to observe the child's interactions with foster parents, birth parents and other significant individuals. This information will help counsel to better understand the child's perspective, priorities and individual needs, and will assist counsel in identifying relevant questions to pose to the child.

Counsel should advise the client of the potential consequences of particular positions. Counsel may express an opinion concerning the likelihood of the court or other parties accepting particular positions. Counsel may inform the child of an expert's recommendations germane to the issue. Counsel should recognize that the child may be more susceptible to the lawyer's influence than some adult clients, and should ensure that the child's expressed preferences reflect his or her actual position.

(b) If counsel reasonably determines that the child is able to make an adequately considered decision with respect to a matter in connection with the representation, counsel shall represent the child's expressed preferences regarding that matter.

*Commentary:* Rule 1.2 of the Massachusetts Rules of Professional Conduct requires counsel to "seek the lawful objectives of his or her client." Only if the lawyer determines that the client is incapable of making adequately considered decisions in connection with the representation, may counsel deviate from this requirement, and even then counsel must "as far as reasonably possible, maintain a normal client-lawyer relationship with the client." See Mass. R. Prof. C. 1.14, Client Under a Disability.

A child's ability to determine his or her own position may depend upon the particular matter to be determined or the circumstances involved at the time. Thus, a child may be able to make some decisions and not others. For example, counsel may reasonably determine that the child is capable of deciding that he or she would like to have visits with a sibling, but is not capable of deciding whether he or she should return home or remain with relatives on a permanent basis. Additionally, as time passes and the child matures, he or she may become more capable of directing the representation.

In determining whether a child is able to make an adequately considered decision, counsel may wish to seek guidance from appropriate professionals and others with knowledge of the child, including the advice of an expert. Counsel may consider the following factors: the child's ability to communicate a preference, whether the child can articulate reasons for the preference, the decision making process used by the child to arrive at the decision (e.g., is it logical, is it consistent with previous positions taken by the child, does the child appear to be influenced by others, etc.); and whether the child appears to understand the consequences of the decision. See Report of the Working Group on Determining the Child's Capacity to Make Decisions, 64 Fordham Law Review 1339 (1996). In assessing the child's ability to make adequately considered decisions, it is the quality of the child's decision-making, not the wisdom of the child's decision that is determinative. For example, the decision of a thirteen-year-old to return home to a marginally fit parent may not be in the child's best interests, but the child may well be competent to make that decision.

If counsel reasonably determines that the child is able to make an adequately considered decision with respect to a matter in connection with the representation, counsel must represent the child's expressed preferences regarding that matter, even if the attorney believes the child's position to be unwise or not in the child's best interest. Requesting the appointment of a guardian ad litem in such cases is contrary to the Rules of Professional Conduct. Of course, the lawyer does have a counseling function and should advise the client of the potential consequences of his or her position. However, the child's attorney should recognize that the child may be more susceptible to the lawyer's influence than some adult clients, and should ensure that the decision the child ultimately makes reflects his or her actual position.

(c) If a child client is incapable of verbalizing a preference, counsel shall make a good faith effort to determine the child's wishes and represent the child in accordance with that determination or may request appointment of a guardian ad litem/next friend to direct counsel in the representation.

*Commentary:* If a child is incapable of verbalizing a preference, counsel may make a substituted judgment determination, i.e., determine what the child would decide if he or she were capable of making an adequately reasoned decision, and represent the child in accordance with that determination. Alternatively, counsel may ask for the appointment of a guardian ad litem to make a substituted judgment determination and to provide direction to counsel concerning the representation. If a guardian ad litem is appointed, counsel should ensure that the role of the guardian ad litem is clearly defined by the court. In making a substituted judgment determination, counsel may wish to seek guidance from appropriate professionals and others with knowledge of the child, including where necessary, the advice of an expert.

Counsel should not confuse inability to express a preference with unwillingness to express a preference. If an otherwise competent child chooses not to express a preference on a particular matter, counsel should determine if the child wishes the attorney to take no position in the proceeding, or if the child wishes the attorney or someone else to make the decision for him or her. In either case, the attorney is bound to follow the client's direction.

(d) If a child can verbalize a preference with respect to a particular matter, but counsel reasonably determines, pursuant to paragraph (b) above, that the child is not able to make an adequately considered decision regarding the matter and if representing the child's expressed preferences does not place the child at risk of substantial harm, then counsel shall represent the child's expressed preferences.

If the child is not able to make an adequately considered decision regarding the matter and if counsel determines that pursuing the child's expressed preferences would place the child at risk of substantial harm, counsel may choose one of the following options:

- (i) represent the child's expressed preferences regarding the matter;
- (ii) represent the child's expressed preferences and request the appointment of a guardian ad litem/investigator to make an independent recommendation to the court with respect to the best interests of the child;
- (iii) inform the court of the child's expressed preferences and request the appointment of a guardian ad litem/next friend to direct counsel in the representation; or
- (iv) inform the court of the child's expressed preferences and determine what the child's preferences would be if he or she was able to make an adequately considered decision regarding the matter and represent the child in accordance with that determination.

*Commentary:* The most difficult aspect of representing child clients in these cases is determining what position to take when a child can verbalize a preference but counsel believes that the client is not capable of weighing the various options or understanding the consequences of pursuing particular positions.

The Rules of Professional Conduct provide some limited guidance. Rule 1.14(a) provides that where a client is unable to make "adequately considered decisions," the attorney must "as far as reasonably possible, maintain a normal client-lawyer relationship with the client." Further, the commentary to the Rule recognizes that there exist "intermediate degrees of competence" and that "children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody." Thus, at a minimum, counsel's obligation includes informing the court of the child's expressed preferences.

If the incompetent child's expressed preferences will not subject the child to a risk of substantial harm, counsel is obligated to pursue the child's wishes. Mass. R. Prof. C. 1.14(b) provides that only when the client is incompetent and the attorney believes the client is at risk of substantial harm, may counsel take certain steps to protect the client.

If counsel believes the position chosen by the incompetent child is wholly inappropriate or could result in serious injury to the child, the ethical issues are far more difficult. Of course, the lawyer has a counseling function and should advise the client of the potential consequences of his or her position. However, the child's attorney should recognize that the child may be more susceptible to the lawyer's influence than some adult clients, and should ensure that the decision the child ultimately makes reflects his or her actual position.

If the child cannot be persuaded to change his or her position, paragraph (b) of Mass. R. Prof. C. 1.14 states that when the client is incompetent and the attorney believes the client is at risk of substantial harm, the attorney may take certain steps to protect the client, such as consulting with family members or protective agencies and, if necessary, requesting the appointment of a guardian ad litem. In addition, the commentary to the Rule notes that if a guardian is not appointed, "the lawyer often must act as de facto guardian."

Thus, if counsel believes that advocating the incompetent child's expressed preferences will place him or her at risk of substantial harm, counsel may advocate the child's expressed preferences and request the appointment of a guardian ad litem to make an independent recommendation to the court with respect to the child's best interests. Alternatively, counsel may use a "substituted judgment" standard (i.e., what the child would decide if he or she were competent to do so) to arrive at the child's position, either by making the substituted judgment determination himself or herself, or by asking for the appointment of a guardian ad litem to make that determination and direct counsel accordingly. A substituted judgment determination is not the same as determining the child's best interests. Rather, it involves determining what the child would decide if he or she were able to make an adequately considered decision. If the child is able to verbalize a preference but is not capable of making an adequately considered decision, the child's verbal expressions are an important factor to consider in making a substituted judgment determination.

If the substituted judgment determination and the child's expressed preferences differ, the commentary to Mass. R. Prof. C. 1.14 suggests that counsel must inform the court of both.

#### 1.7 Determining and Advocating an Adult Client's Position

Counsel shall advocate for an adult client's stated preferences and goals in the proceeding and follow the client's direction throughout the course of the case. Counsel should determine whether the client is "under a disability" pursuant to Rule 1.14 of the Massachusetts Rules of Professional Conduct and shall act accordingly. Nothing herein limits counsel's ability to make strategic legal decisions in the case.

*Commentary:* Counsel should be very cautious in requesting, or responding to a request for, appointment of a guardian ad litem/next friend for a parent because disclosure of the client's disability can adversely affect the client's interests in the proceeding. If a guardian ad litem/next friend is appointed for a parent client, counsel should ensure that the role of the guardian ad litem/next friend is clearly defined by the court.

#### 1.8 Protection of Confidentiality, Privileged Communications, and Attorney Work Product

Consistent with the client's interests and goals, counsel shall seek to protect from disclosure communications and other information concerning the client that are protected by applicable laws of confidentiality and privilege, including attorney work product. Counsel shall explain fully to the client the advantages and disadvantages of choosing to exercise, partially waive, or waive a privilege or right to confidentiality. If counsel for a child determines that the child is unable to make an adequately considered decision with respect to waiver, counsel must act with respect to waiver in a manner consistent with and in furtherance of the client's position in the overall litigation. Counsel may request the appointment of a guardian ad litem for the limited purpose of making decisions regarding waiver.

*Commentary:* Counsel shall take whatever steps are necessary to protect the client's privileges and right to confidentiality promptly following appointment to the case. Counsel should not wait until the time for filing pre-trial motions to address these matters. Improper disclosure of confidential or privileged information early in the proceeding may color and impact the manner in which the parties, the court investigator, and the court perceive the client, the services offered to the client, and the position taken by the parties. In addition, the underlying purpose of the laws of confidentiality and privilege, to protect an individual's interest in keeping private certain information and certain relationships, is an important goal independent of the effect disclosure would have on the proceeding.

If a child is able to make an adequately considered decision with respect to waiver of a privilege or right to confidentiality, counsel shall advocate the child's position and, if necessary, oppose the appointment of a guardian ad litem to substitute his or her judgment for that of the child. If a guardian ad litem is appointed for a child client, counsel should ensure that the role of the guardian ad litem is clearly defined by the court.

If counsel for a child determines that the child is unable to make an adequately considered decision with respect to waiver, counsel must consider whether to request the appointment of a guardian ad litem for the limited purpose of making a substituted judgment determination with respect to the matter. Counsel should ensure that the guardian ad litem considers only those factors that a competent client would consider. Counsel may wish to ensure that the guardian ad litem consider: (1) the child's expressed preferences, if any; (2) the nature of the communications and the effect on the child of disclosure; and (3) the extent to which disclosure advances or hinders the child's position in the proceeding. Counsel should object to the extent the guardian ad litem considers the need of other parties for the information insofar as the role of the guardian ad litem is to make a substituted judgment determination, not to weigh the relative benefits and harms to the child and other parties.

Counsel must be prepared to respond to any attempt by another party to waive or invoke the client's privilege or right to confidentiality.

#### 1.9 Missing Parent Clients

In the event a client's whereabouts are unknown, counsel shall take a position in court and administrative proceedings consistent with the client's last clearly articulated position or directive. In the absence of such information, or in the event circumstances have changed materially since the client last articulated a position, whether or not to take action on behalf of such client is a matter left to the discretion of counsel consistent with the Massachusetts Rules of Professional Conduct.

*Commentary:* The whereabouts of a client may, for any number of reasons, become unknown to counsel. If the client's whereabouts become unknown during the course of a case, counsel should take any actions which are consistent with the last clearly articulated position or directives of the client. In the absence of such information, any action taken on behalf of the client is left to counsel's discretion.

Except as otherwise set forth in Commentary to Standard 2.1, if counsel has never had contact with a client or counsel is unable to contact the client after diligent efforts, counsel may either (a) withdraw from the representation, or (b) take no position in the proceedings but take such actions as counsel deems necessary and appropriate to protect other rights and interests of the client, such as rights to confidentiality and the exercise of privileges. See Standard 7.3.



## 2. TEMPORARY CUSTODY (INCLUDING 72-HOUR) HEARINGS

### 2.1 Right to Hearing.

Counsel shall assert and protect the client's right to temporary custody (including 72-hour) hearings.

*Commentary:* Temporary custody hearings (including the so-called "72-hour hearing") is an event of crucial strategic importance in child welfare cases. Because of the potential for serious ramifications to the parent-child relationships and the safety of the child, due process demands that clients receive diligent, zealous representation of counsel at such hearings. This is true whether the client supports or opposes a transfer of temporary custody. If the parents consent to a temporary order of custody to DSS, and if the child's position is to be placed in the temporary custody of a relative or other individual, counsel for the child should assert the child's right to a temporary custody hearing to present evidence in support of his or her position. See Care and Protection of Manuel, 428 Mass. 527 (1998).

The statute governing probate court orders of temporary custody to DSS does not contain all of the procedural safeguards that are mandated in the juvenile court. In probate court proceedings, counsel should assert the client's right to a temporary custody hearing consistent with due process. A client in the probate court should receive no less procedural protection than that afforded similarly situated clients in the juvenile court. See Adoption of Donald, 44 Mass. App. Ct. 857 (1998).

*Postponement by court:* The trial court may, due to scheduling difficulties, inform counsel of the need to postpone a temporary custody or 72-hour hearing. If such a continuance is inconsistent with the client's interests or goals, counsel should object to any such postponement. If necessary, counsel should consider pursuing the client's right to a timely hearing by taking an interlocutory appeal.

*Requesting continuances:* In some instances, counsel may not receive notification of his or her assignment in time to prepare adequately to represent the client at a temporary custody hearing or to summons witnesses or documents. Should this occur, counsel should advise the client of counsel's need for additional time to prepare and, if the client consents, object to proceeding with the hearing and seek a short continuance, provided that the benefit of a continuance outweighs the prejudice of not going forward. Counsel may also need to request a continuance or reserve the client's right to a hearing if the client is unavailable due to illness or some other reason.

*Denial of right to hearing:* If the court denies a client his or her right to a temporary custody or 72-hour hearing, and such denial is inconsistent with the client's interests and goals, counsel should consider pursuing the client's right to a hearing by taking an interlocutory appeal.

*Presence of client:* If a parent client is not present as a consequence of failure of notice by the court or DSS, counsel should object to proceeding without the client and seek to preserve the client's right to a 72-hour hearing. If a client is incarcerated or involuntarily committed, counsel should file a habeas corpus petition seeking transportation of the client to court. If such a petition is impracticable or a habeas order unenforceable (as it may be in cases where the client is incarcerated outside the commonwealth or in the federal system), counsel must file a motion asking the court to accommodate the client's right to participate in the proceedings through closed circuit television, telephone, or by some other means. If a child client wishes to attend a hearing, and such attendance is appropriate given the child's age and abilities and the nature of the proceedings, counsel should assure the child's attendance.

*Counsel without direction from client:* If counsel is without direction from a client as to his or her goals at the hearing, counsel should seek to protect and preserve the client's due process rights. Counsel should, depending on the circumstances, request a continuance of the hearing or take such other steps as are necessary to preserve the client's right to a temporary custody hearing.

## 2.2 Preparation for Hearing.

In preparation for the temporary custody (including 72-hour) hearing,

(a) counsel shall:

(i) conduct an initial interview with his or her client, determine the client's position, advise the client as to the merits of the case, and develop a strategy for preparing for and conducting the hearing;

(ii) discuss with the client his or her right to refuse to give certain testimony under the 5th Amendment of the U.S. Constitution and Article XII of the Massachusetts Declaration of Rights; and

(iii) review all pleadings filed in the case, any reports of suspected abuse or neglect filed pursuant to G.L. c. 119, § 51A or 51B regarding the incident(s) which led DSS to petition the court for legal custody, and all documents to be submitted as evidence at the hearing.

(b) counsel shall, if applicable and to the extent practicable:

(i) review other portions of the client's DSS file, any pleadings filed in other child welfare cases involving the client, and any other relevant records;

(ii) if consistent with the client's interests and goals, identify relatives, family friends, or other persons who are potential placement or custody options, and take such steps as may be necessary to offer such persons to DSS and/or to the court for placement or custody determinations; and

(iii) if consistent with the client's interests and goals, identify and interview potential witnesses, prepare such witnesses for the hearing, and subpoena documents and/or witnesses to appear at court for the hearing.

*Commentary:* Depending on the client's interests, it may be appropriate to seek a grant of temporary custody by the court to the relative, family friend, or other person identified by the client. This is to be distinguished from a grant of custody to DSS, who can then place the child in foster care with that person. Counsel should advise the client and the placement/custody option on the differences and relative advantages and disadvantages of temporary custody versus foster care, including but not limited to issues such as the authority to make decisions regarding the child's care, eligibility for grantee-relative benefits through the Department of Transitional Assistance and/or foster care payments, eligibility for services offered by DSS, and visitation.

The alternative remedies of a return of custody to the parent and a grant of custody to a relative, family friend, or other identified custody option are not mutually exclusive at the 72-hour hearing. Counsel need not choose between these options, and, if consistent with the client's interests and goals, must be prepared to pursue said alternative remedies at the 72-hour hearing.

### 2.3 Conduct of Hearing.

To the extent consistent with the client's interests and goals as determined pursuant to these Performance Standards, counsel shall, at the temporary custody (including 72-hour) hearing:

- (a) file any and all appropriate motions and legal memoranda, including but not limited to motions regarding (i) placement or custody of children, (ii) visitation, (iii) the assertion of privileges and confidential relationships, and (iv) the admission, exclusion or limitation of evidence;
- (b) present and cross examine witnesses, and provide evidence in support of the client's position;
- (c) make any and all appropriate evidentiary objections and offers of proof, so as to preserve the record on appeal; and
- (d) take any and all other necessary and appropriate actions to advocate for the client's interests and goals.

*Commentary:* Counsel must also remain cognizant of the provisions of G.L. c. 119, §§ 24 and 29C obligating the DSS to make reasonable efforts, prior to removing a child from the home, to eliminate the need for said removal. If appropriate, counsel should ask the court to certify that DSS failed to make reasonable efforts to prevent removal. Counsel should be aware that such a certification at this stage of the proceeding may bar a child from receiving certain services or subsidies if placed out of state.

## 3. INVESTIGATION AND DISCOVERY

To develop and support the client's position, counsel shall conduct a thorough and continuing investigation at every stage of the proceeding which is independent of that of any other party to the proceeding and of any court investigator or guardian ad litem appointed by the court.

*Commentary:* Thorough, thoughtful and independent investigation is necessary for counsel to develop the client's position and a theory of the case, advise the client and identify potential evidence, whether beneficial or detrimental to the client's position.

### 3.1 Informal Discovery

- (a) Meet with Client. Counsel shall meet with the client and obtain from the client information relevant to the proceeding and the client's position.

*Commentary:* The client is an important and primary source of information regarding the facts of the case, the family and its history. The client may also assist counsel by identifying sources of information and records which may be relevant to the proceeding. Even with very young children, counsel can obtain valuable information from meeting with the child and viewing the child in his or her environment. (See Standard 1.5, Communications with Client) Counsel should maintain an adequate, contemporaneous record of such client interviews.

(b) Review of DSS Records. DSS records are an integral part of the preparation of a case. Counsel shall obtain the entire social services file. These records may be obtained through a formal or informal process.

*Commentary:* Counsel may be able to obtain the records informally by a written request to the DSS office. However, counsel should also be aware of the Juvenile Court rules and the Code of Massachusetts Regulations regarding discovery. For Probate and Family Court actions, counsel may need to file appropriate requests for production of documents.

While the Juvenile Court Rules do not define what is meant by the “entire” social services file, a review of the DSS Policies and Procedures Manual provides guidance as to the potential documents which will be generated or obtained by DSS when servicing a family. The records received from DSS may not contain the home finder records or any other records on the foster or pre-adoptive home. Counsel may need to file a motion to obtain those records.

(c) Review of Court Records. Counsel shall review court records for the proceeding in which she or he is appointed on an on-going basis. Such review shall include any court investigator, guardian ad litem, family service or probation officer reports.

(d) Other records. Counsel shall review relevant social service, medical, psychiatric, psychological, substance abuse, law enforcement, CORI and school records, as well as records of other court proceedings, as appropriate, and take the necessary steps to obtain such records.

(e) Interviews. Counsel shall contact and interview, where appropriate, those individuals with information concerning the family, such as parents, relatives, caretakers, neighbors, DSS social workers and other social service personnel, school personnel, day care providers, medical providers, treatment providers, former counsel, probation officers, family service officers as well as those individuals who are suggested by the client or identified through investigation or discovery as potential witnesses.

*Commentary:* Counsel should be mindful of Rule 4.2 of the Massachusetts Rules of Professional Conduct, which prohibits an attorney from communicating about the subject of the representation with a person known to be represented by another attorney in the matter unless the other attorney consents. When the represented “person” is an organization such as DSS, Rule 4.2 only prohibits ex parte contact with those employees: (1) who exercise managerial responsibility in the matter; (2) who are alleged to have committed the wrongful acts at issue in the litigation; or (3) who have authority on behalf of the organization to make decisions about the course of the litigation. Neither the Rule nor case law speaks to whether, or the circumstances under which, counsel may contact DSS social workers or other DSS employees without the consent of DSS counsel. Counsel should consult Rule 4.2, the commentary thereto, and Messing, Rudavsky & Weliky, P.C. v. President and Fellows of Harvard College, 436 Mass. 347 (2002), for guidance on this issue.

(f) Physical Evidence. To the extent practicable, counsel shall view any relevant physical evidence.

(g) Counsel shall contact opposing counsel to gather information about the case and the positions of the other parties.

(h) Counsel should, if appropriate, necessary and practicable, attend all service planning, treatment and placement meetings, administrative reviews and hearings and other proceedings involving the client. In addition, if counsel represents a child, counsel should, if appropriate, necessary and practicable, attend school conferences.

### 3.2 Formal Discovery.

Counsel shall, if necessary, conduct formal discovery (a) to develop a more formalized record for trial, (b) to obtain in a timely manner the information necessary to develop and support the client's position and/or (c) to understand an opponent's case. At a minimum, counsel's strategy should include consideration of the following types of formal discovery: depositions, interrogatories (including expert interrogatories), requests for production of documents, requests for admissions, and motions for mental or physical examination of a party.

Counsel shall, consistent with the client's interests and goals, and where appropriate, take all necessary steps to preserve and protect the client's rights through opposition to the discovery requests of other parties. This includes, but is not limited to, invoking applicable privileges and rights to confidentiality, raising objections on the basis of relevance, and seeking appropriate limitations on the discovery requested.

*Commentary:* Counsel should timely file and seek court action on any motions to permit, compel, assist or oppose discovery as required by the applicable court rules or the Indigent Court Costs Act. In addition, counsel may deem it appropriate to seek sanctions for a party's failure to comply with discovery requests or orders.

## 4. **SEEKING CLIENT OBJECTIVES**

### 4.1 Obtaining Services for the Client and His or Her Family.

Consistent with the client's interests and goals, counsel shall request that DSS provide appropriate services in a timely manner to the client and/or members of his or her family. The attorney shall negotiate with DSS for the development of a service plan that meets the client's interests and needs and advances the client's goals in the litigation. In the event that DSS' proposed service plan does not meet the interests or needs of the client, counsel may, as appropriate, challenge the service plan through available administrative and judicial means. As necessary, counsel should investigate the availability of services or benefits provided by other public or private agencies or organizations and seek such services for the client.

*Commentary:* Counsel should make an independent determination of what services are necessary to meet the client's needs and to advance the client's interests in the litigation. Counsel should consider any barriers to the client's use of available services including disabilities or transportation, language or cultural barriers and seek to overcome such barriers.

Services may include: family preservation-related prevention or reunification services; sibling and family visitation; domestic violence prevention, intervention and treatment; medical care; mental health services; substance abuse treatment; parent and home health aides; parenting education; respite services; independent living services; specialized or long-term foster care; adoption services; education; recreational or social services; housing; financial assistance; vocational or employment-related services.

Counsel may advocate that services be provided to the client, to another family member, or to the child's substitute caretaker. For example, where the child supports reunification, child's counsel may advocate that the parent receive particular services necessary to enable the parent to care properly for the child. Alternatively, parents' counsel may advocate for the child to receive particular services necessary to permit the child to return home.

Counsel should be aware that the DSS regulations require that, to the greatest extent possible, the service plan be developed jointly with the family. It is important that counsel actively participate in service planning for the client.

Where counsel represents a child for whom the permanent plan is guardianship or adoption, counsel should seek to ensure, prior to the adoption or guardianship finalization, that the child and permanent caretakers will receive all necessary and appropriate post-guardianship or post-adoption services and subsidies for which they may be eligible.

#### 4.2 Visitation.

At each stage of the proceeding, counsel shall assert the client's rights to, or interests in, parent-child, sibling or other visitation.

#### 4.3 Custody and Placement.

At each stage of the proceeding, counsel shall zealously advocate for placement or custodial options consistent with the client's goals and objectives, and should be prepared to present placement alternatives with family members or friends.

#### 4.4 Communicating with the Court Investigator/Guardian ad Litem.

(a) Counsel shall contact the court investigator/guardian ad litem as soon as practicable to inform him or her of the attorney's role and of the client's position.

(b) Counsel shall, if appropriate, revoke all authorizations for the release of confidential information and oppose motions seeking access to such information.

(c) Counsel shall inform the client of the role of the court investigator/guardian ad litem, including the consequences of cooperating or failing to cooperate with the court investigator/guardian ad litem, and prepare the client for the interview.

(d) Counsel shall be present at any interviews of the client by the court investigator/guardian ad litem, unless there are compelling reasons why counsel's presence would be unnecessary.

(e) Counsel shall assist the court investigator/guardian ad litem in obtaining information that supports the client's position.

*Commentary:* Counsel's presence at the court investigator's or guardian ad litem's interview with the client not only provides support for the client but ensures that the client has the opportunity to fully answer all questions and to present information, including the names of other persons to be interviewed, that is helpful to the client's case. Counsel's presence can be invaluable in preparing future cross examination of the interviewer. It also permits counsel, where appropriate, to advise the client not to answer specific questions posed by the interviewer or not to sign releases in the form submitted.

Many of the standards herein may apply as well to evaluations by other persons evaluating or interviewing the client, such as court appointed special advocates (CASAs), court clinicians, family service officers or probation officers.

#### 4.5 Filing Pleadings.

Prior to trial, counsel shall, as necessary, file petitions, motions, responses or objections to protect the client's rights and interests and to advance the client's position in the case. Relief requested may include, inter alia, temporary custody orders; orders concerning visitation; rulings that DSS has abused its discretion; court-ordered evaluations; funds for experts or other services necessary for representation permitted under the Indigent Court Costs Act; restraining orders; contempt for non-compliance with a court order; protective orders concerning the client's privileges and right to confidentiality; appointment of guardians ad litem; or dismissal of petitions or motions.

#### 4.6 Interlocutory Appeals

(a) Petition to Single Justice. Trial counsel shall, where appropriate, seek interlocutory relief from an order of the trial court by filing a petition to a single justice or through other appellate means. Counsel shall provide CAFL administrative staff with a copy of the petition and any supporting memoranda.

*Commentary:* As a general rule CPCS does not assign certified appellate counsel to represent clients in interlocutory matters before the single justice sessions of the appellate courts, and trial counsel remains responsible for such representation. Regional Coordinators and CAFL staff are available to provide advice on interlocutory matters on a case by case basis. In certain circumstances, CAFL staff may be able to assign a mentor to counsel to assist with the filing of the petition or even assign certified appellate counsel.

(b) Appeal of Single Justice Order. Trial counsel shall, where appropriate, appeal an adverse order by the single justice to the full appellate court. In the event counsel elects to appeal an order of a single justice, or if the single justice reports his or her decision to the full appellate court, counsel shall promptly (i) contact CAFL for the assignment of certified appellate counsel to work on the appeal, and (ii) provide CAFL with copies of all papers filed in the appellate court that were not already provided under section (a) above.

#### 4.7 Experts

(a) Counsel shall retain an expert where reasonably necessary to assist counsel in preparing or presenting the case.

(b) If counsel determines that expert assistance is necessary, counsel shall file a motion under the Indigent Court Costs Act to obtain the necessary funds for hiring an expert. If the motion is denied in whole or in part, counsel shall consider filing a notice of appeal in accordance with G.L. c. 261, § 27D.

(c) Counsel shall protect the confidentiality of all expert-related information including as necessary: filing motions for costs on an ex parte basis; requesting impoundment of the motion for costs; and informing the expert about the attorney-client privilege and attorney work-product protection.

*Commentary:* Otherwise discoverable documents enjoy a qualified immunity from discovery if they are attorney work product pursuant to Rule 26(b)(3) of the Massachusetts Rules of Civil Procedure. Work by an expert retained by counsel is similarly protected. Counsel should take steps to safeguard the expert's work product, including filing the motion for costs ex parte and seeking impoundment of the motion. Counsel should send the expert an engagement letter that explains the expert's role in assisting counsel, and directs the expert to speak to no one about his or her work without counsel's permission. In the event counsel makes a strategic decision to share the results of the expert's work, counsel should convey such results him- or herself; counsel should not allow another attorney to speak to directly to the expert. If counsel fails to take adequate precautions, he or she may inadvertently waive the work product protection. See Adoption of Sherry, 435 Mass. 331 (2001).

(d) Counsel shall be familiar with the foundational requirements for the admission of expert testimony.

*Commentary:* Counsel may hire a "testimonial expert" to provide testimony in a hearing or trial, or a "preparatory expert" to provide assistance to counsel in preparing the case. The need for expert assistance should be considered throughout the case, for example at the temporary custody hearing, an abuse of discretion hearing, trial or permanency hearing. More than one expert may be needed in a particular case.

For testimonial experts, adequate preparation is essential. Adequate preparation is also essential if counsel is opposing admission of expert testimony. Counsel should be aware that expert opinion comes not just from hired experts. Fact witnesses, such as social workers, guardians ad litem, court investigators and treatment providers may also offer expert opinion. Counsel should be prepared to satisfy or challenge the foundational requirements of such opinions.



## 5. PERMANENCY HEARINGS

Counsel shall assert and protect the client's right to a hearing on the permanency plan for the child.

### 5.1 Right to Hearing

*Commentary:* The court may choose to conduct a permanency hearing in conjunction with an adjudicatory hearing on the merits of the petition. Counsel should object if this is prejudicial to the client. Counsel should zealously advocate for the client in the permanency hearing in addition to any obligation he or she may have in the adjudicatory hearing.

In the event that the court denies or improperly limits the client's right to a permanency hearing, counsel should consider pursuit of any available avenues for relief, including but not limited to interlocutory appeal, or appeal under G.L. c. 119, § 29B. Counsel should ensure that the appellate record is preserved by making detailed and specific offers of proof through, among other methods, affidavits or oral or written proffers.

### 5.2 Preparation for Hearing

In preparation for the permanency hearing, consistent with the client's interests and goals, counsel shall:

- (a) obtain and review the permanency plan for the child filed by the petitioner, and determine the extent to which the plan is consistent with the client's position;
- (b) if the proposed plan is inconsistent with the client's position, file a timely objection;
- (c) conduct any necessary discovery;
- (d) determine what evidence to present;
- (e) prepare for the direct and cross examinations of witnesses; and
- (f) take all necessary and appropriate steps to ensure the availability and presentation of evidence at the hearing, including but not limited to the issuance of subpoenas and the filing of motions.

*Commentary:* Counsel should be familiar with Trial Court Rule VI, Uniform Rules for Permanency Hearings. Counsel should seek a continuance of the permanency hearing when the petitioner has not complied with Trial Court Rule VI, unless a continuance is inconsistent with the client's position.

### 5.3 Conduct of Hearing

During the hearing, counsel shall act as a zealous advocate. To the extent consistent with the client's interests and goals, counsel shall:

- (a) file all appropriate written objections, motions, and/or legal memoranda;
- (b) present and cross examine witnesses;
- (c) make any and all appropriate evidentiary objections and offers of proof, so as to preserve the record on appeal;
- (d) consistent with the client's goals, advocate for a finding as to reasonable efforts; and
- (e) prepare requested findings of fact, conclusions of law, and proposed orders.

*Commentary:* Because the issues to be litigated at a permanency hearing often overlap with those to be litigated at a trial, the court may be inclined to limit the scope of the evidence to be presented at the permanency hearing. Consistent with the client's position, counsel should object to any limitations placed on the client's ability to present evidence.

There may be situations in which it is strategically advantageous to not fully litigate at the permanency hearing. Counsel must consider whether it better serves the client's interests to wait until the trial or other stage of the proceeding to present and/or object to evidence.

Where appropriate, counsel should seek to secure specific orders at the permanency hearing, as a means for expediting permanency for the child.

For guidance regarding the client's participation at the permanency hearing, see Standards 1.9, 2.1 and 6.1(h) and commentary thereto, concerning the presence of the client and the client's direction to counsel.

### 5.4 Appeal

If the client wishes to appeal the permanency hearing decision, counsel shall file a timely appeal and follow the rules set forth in Standard 8.1.

## 6. TRIAL PREPARATION AND CONDUCT

### 6.1 Trial Preparation

Counsel shall take all necessary and appropriate steps to fully prepare, defend and present the client's position at trial.

*Commentary:* In order to effectively prepare and defend the client's case, counsel should have a theory of the case, i.e., a cogent statement of a position that justifies the outcome. Throughout trial preparation, counsel needs to consider the theory of the case and how each piece of evidence affects the theory.

(a) Pretrial motions. Counsel shall prepare and file pretrial motions that advance the client's interests and seek to have such motions heard expeditiously by the court.

*Commentary:* Counsel should consider the full range of pre-trial motions available to advance the client's position at trial. Such motions may include, inter alia, discovery motions; motions in limine to exclude evidence; motions to strike; motions for speedy trial and consecutive days of trial; motions for visitation; motions to bifurcate proceedings; and motions for stenographic record and for the allowance of funds pursuant to the Indigent Court Costs Act, G.L. c. 261, §§ 27A-G.

(b) Counsel shall determine what evidence will be submitted to the court.

*Commentary:* Counsel shall identify all lay and expert witnesses as well as all documentary, demonstrative and physical evidence that he or she will seek to introduce into evidence in the client's behalf. In addition, counsel shall be prepared, when necessary, to cross-examine all witnesses called by other parties and object to, or file appropriate limiting motions as to, documentary evidence proffered by other counsel.

(c) Pretrial conference. Counsel shall notify the client of the pretrial conference date in writing and shall prepare for the pretrial conference. Counsel shall seek to discuss with other counsel and/or pro se litigants contested and uncontested facts and issues. Such preparation may also include the drafting and filing of motions in limine and pretrial memoranda in accordance with the pretrial orders, rules or practices of the court.

*Commentary:* The purpose of the pretrial conference is to determine contested and uncontested facts, simplify issues for trial, explore settlement opportunities and to estimate accurately the necessary trial time for the court.

Counsel should request that the court establish a deadline for outstanding discovery requests and the exchange of final witness and exhibit lists prior to trial. Counsel may also consider seeking consecutive trial dates or the sequestration of witnesses. Counsel should endeavor to take all steps to advance the client's position including, where possible entering into stipulations of uncontested facts or stipulations to testimony.

Counsel should be aware that Juvenile Court Rule 8 requires counsel to submit any motions in limine relative to the court investigator's report at the time of the pretrial conference. Failure to submit such motion in accordance with the rules may prohibit counsel from submitting it at a later date, thereby precluding counsel from objecting to such evidence.

(c) Scheduling of Trial. Where consistent with the client's interests, counsel shall take all steps necessary to assert the client's right to a prompt trial, which may include objecting to continuances or moving for protective orders, sequential trial dates, or for a speedy trial.

*Commentary:* There are a number of issues that can result in trial delays, such as the need for a foreign language or sign language interpreter, stenographer, or audio-visual equipment to permit an incarcerated client to participate in the proceedings. Counsel must consider these issues in his or her trial preparation.

(d) Counsel shall take all necessary and appropriate steps to assure the availability and submission of evidence at trial.

*Commentary:* Counsel should provide written notification of the trial date to the client and all witnesses. Counsel should determine the availability and willingness of witnesses to appear and testify at trial. If witnesses are unavailable on the date that the trial is scheduled, counsel should consider the necessity of seeking a continuance of the trial if the testimony is crucial to the client's position or, in the alternative, explore other methods of introducing the testimony into evidence. If the appearance of a witness or party necessitates the issuance of a subpoena or writ of habeas corpus, counsel should seek the issuance of such process and take steps to assure the payment of any fees associated with such process.

Counsel should take all necessary action to assure that documentary evidence is available for introduction into evidence. Counsel should consider utilizing various statutory remedies, including the issuance of subpoenas duces tecum in this regard. In conjunction with all counsel, counsel should consider preparing an exhibit book containing stipulated and contested documentary evidence for the convenience and benefit of the court.

Counsel should consider assembling a trial notebook which contains, inter alia, witness testimony, exhibits, pretrial orders, pleadings, evidentiary memoranda, statutory and decisional law, timeline, genogram, family history, etc. to assist counsel's organization during trial. Counsel shall, as appropriate or where requested by the court, prepare evidentiary memoranda, requests for rulings and findings of fact and rulings of law consistent with the client's position and the anticipated evidence.

(e) Preparation of witnesses. Counsel shall prepare his or her own witnesses for direct and cross examination in advance of trial.

(g) Participation of parent client: Counsel shall fully prepare the parent client to testify and shall discuss with him or her the desirability of the client testifying at trial and the adverse inferences which may be drawn by the court in the event that a parent client does not testify. Further, counsel shall advise the parent client that an opposing party may call the parent client as a witness. Counsel shall discuss with the parent client his or her right to refuse to give certain testimony under the 5th Amendment of the U.S. Constitution and Article XII of the Massachusetts Declaration of Rights.

*Commentary:* The parent client's testimony can be the most helpful or damaging evidence to the client's case, depending on preparation. Such preparation should include multiple meetings with the client to explain the testimonial process and to participate in mock direct and cross-examinations of the client.

If the parent client is incarcerated counsel must visit the client to ensure proper preparation. Counsel shall seek to ensure an incarcerated client's presence at trial by petition for habeas corpus. If the client's presence cannot be secured, counsel shall seek to preserve the client's right to participate in the proceedings by filing a motion for some other form of accommodation such as closed circuit television or telephone. See also Standard 2.1 Commentary.

(h) Participation of child client: Counsel for a child client should accommodate the expressed wishes of a competent child client to be present during trial. In determining whether to call the child client as a witness, counsel shall consider the child's competency to testify, the need for the testimony, the harm that such testimony may cause the child and the child's expressed wishes. Counsel shall prepare the child to testify and seek appropriate accommodation for the child from the court to minimize any anticipated trauma. Where appropriate, counsel shall oppose the efforts of other parties to call the child as a witness.

*Commentary:* Counsel should prepare the child in an age appropriate manner to testify at trial. Counsel may wish to consult persons familiar with the child or retain an expert to assist in such preparation.

If the child does not wish to testify, but counsel determines that the child's testimony would further the child's position, counsel should explore whether there are alternative means for the court to admit any statements of the child which may be relevant to the proceeding, such as exceptions to the hearsay rule or the inclusion of such statements in any report of the court investigator and/or guardian ad litem. In addition, counsel should examine whether evidence which the child might give the court is available from other witnesses.

If the child does not wish to testify, but is subpoenaed to testify, and testifying could be harmful to the child, counsel should seek to quash the subpoena through the presentation of evidence as to said harm to the child. Alternatively, counsel should determine if the evidence can be admitted through any of the other means described in the preceding paragraph.

If the child must testify, counsel should seek to minimize any harm to the child by requesting special accommodations for the child's testimony, such as altering the location of the testimony, allowing the child to testify informally and in a developmentally sensitive manner outside the presence of other parties to the proceeding, using leading questions, or limiting the scope of cross examination. See Adoption of Roni, 56 Mass. App. Ct. 52 (2002).

The child may wish to be present during trial. While counsel should assure that the child is brought to court, he or she should also counsel the child that the judge may nevertheless exclude the child from the courtroom in an effort to shield the child from potential trauma.

## 6.2 Trial Conduct.

During trial, counsel shall act as a zealous advocate for the client by ensuring that proper procedures are followed and that the client's interests are represented. To the extent consistent with the client's interests and goals, counsel shall:

- (a) File all appropriate motions and legal memoranda, which may include motions regarding (i) post-termination and/or post-adoption contact, (ii) sibling visitation, (iii) the assertion of privileges and confidential relationships, (iv) the admission, exclusion or limitation of evidence to be presented, i.e., motions in limine; or (v) the sequestration of witnesses;
- (b) Present and cross examine witnesses and provide evidence in support of the client's position;
- (c) Make any and all appropriate evidentiary objections and offers of proof, so as to preserve the record on appeal; and
- (d) Prepare proposed findings of fact and conclusions of law.

*Commentary:* Although a client's position may be consistent with that of another party, counsel for that client remains responsible for presenting evidence and witnesses. Counsel should also make all necessary evidentiary objections, because an objection by one attorney to evidence or testimony protects only that attorney's client.

Proposed findings and conclusions are a crucial opportunity to marshal evidence supporting the client's position. They may also help to preserve issues for appeal. Proposed findings of fact must reference the evidentiary source(s). The Supreme Judicial Court has issued guidelines for proposed findings for these cases that are available on the CPCS website.

## 7. SETTLEMENT

Counsel should participate in settlement negotiations to seek the best result possible for the client consistent with the client's interests and directions to counsel. Counsel should consider utilizing available settlement resources, including mediation, to narrow contested issues or reach global resolution. Prior to entering into any negotiations, counsel shall have sufficient knowledge of the strengths and weaknesses of the client's case, or of the issue under negotiation, to enable counsel to advise the client of the risks and benefits of settlement.

*Commentary:* From the time of appointment, and at every stage of the proceeding, counsel should be aware of the possibility of settlement opportunity and should discuss such opportunity with the client. Counsel should, consistent with the client's interests and direction, and at strategically appropriate times, proffer and respond to settlement offers without compromising the client's position in the proceeding. Counsel should participate in the settlement process for or with the client to the extent that the client wishes or that it is advisable to protect the client's interests. Counsel must, however, continue to move the litigation forward for the benefit of the client in the event that settlement fails.

Counsel for a child client should keep in mind that a negotiated resolution of these proceedings often serves the child's needs for finality, security and family contact, and should encourage settlement whenever such resolution is consistent with the child's interests and goals.

## **8. POST-JUDGMENT REPRESENTATION**

Counsel shall inform the client of the court's decision and act in accordance with Standard I.5. Counsel shall discuss with the client his or her post-judgment and appellate options regarding an adverse decision from the court. Counsel shall continue to represent the client in accordance with Standard 1.3.

*Commentary:* A child's position may change after trial. It is critical for child's counsel to inform the child of the court's decision and determine whether the child's position requires counsel to challenge all or part of the judgment.

### **8.1 Appeals.**

(a) If the client elects to appeal, counsel shall file a timely appeal, order cassettes or transcripts or ensure that they have been ordered and seek assignment of CAFL appellate counsel in accordance with the Rules of Appellate Procedure. For parent clients, counsel shall take such steps as are necessary to obtain the client's signature on the notice of appeal. If appropriate, counsel shall also request a stay of the judgment pending appeal. Counsel for the appellee shall monitor appellant's compliance with appellate deadlines.

(b) Counsel shall submit necessary documentation to CAFL for the assignment of appellate counsel immediately upon the filing of the appeal, even if counsel is appellate certified. If counsel is appellate certified and wishes to keep a case on appeal, counsel must seek the permission of CAFL administrative staff.

(c) Counsel shall represent the client on all appellate matters until appellate counsel files an appearance.

(d) Counsel shall cooperate with the client's appellate counsel and provide appellate counsel with copies of exhibits, motions, and other pleadings. Counsel shall provide appellate counsel with other papers, including the case file and/or trial notes, upon request.

## 8.2 Post-Judgment Hearings, Reviews and Motions.

Following issuance of the judgment, counsel shall continue to represent the client in accordance with Standards 1.3 and 1.5. Counsel shall also continue to represent the client (except for parents where parental rights have been terminated) at all appropriate administrative and foster care reviews. Where appellate counsel has been assigned, trial counsel shall notify appellate counsel of any activity in the trial court and any other significant event.

*Commentary:* Counsel continues to represent the client in the trial court when an appeal is taken. Counsel should not withdraw from the case just because an appeal is filed. After the appeal has been docketed in the Appeals Court, trial counsel may not file certain pleadings in the trial court which seek to affect the judgment absent leave of the appellate court. Counsel should notify appellate counsel of the need to proceed in the trial court and request that appellate counsel seek the appropriate leave of court.

## 8.3 Cessation of Representation

(a) Conclusion of case. In the event the case concludes by the occurrence of one of the events described in Standard 1.3(a) above, counsel shall notify the client and explain the meaning and ramifications of case conclusion.

(b) Withdrawal from case. In the event counsel seeks to withdraw from a case, counsel shall move the court for successor counsel for the client. Counsel shall provide the client with a copy of the motion to withdraw and notice of the hearing. Counsel shall, to the extent practicable, avoid disclosing confidential information and information adverse to the client in any motion to withdraw or hearing thereon. If successor counsel is named, counsel shall cooperate with successor counsel. In the event the court determines not to appoint successor counsel, counsel should advise the court and opposing counsel of the client's address, unless otherwise directed by the client.

*Commentary:* In situations where counsel is withdrawing at the client's request, counsel should advise the client that the court may decline to appoint substitute counsel unless the client can demonstrate good cause. See Adoption of Olivia, 53 Mass. App. Ct. 670, 673-675 (2001).

It is very important that pro se clients receive the same pleadings and notices as are served on counsel. If counsel is withdrawing from a case involving domestic violence or presenting other safety concerns for the client, counsel may not wish to disclose the client's address to other counsel or other pro se litigants. In such circumstances, counsel should, contemporaneously with the motion to withdraw and (if possible) after discussion with the client, (a) file a motion to impound the client's address and (b), unless the client provides the court with the completed appointment of agent form, ask the court and remaining counsel to provide the client with notices of any hearings scheduled and copies of any pleadings filed or orders entered.

(c) Striking counsel's appearance. In the event the court strikes counsel's appearance and no successor counsel is appointed, counsel should advise the court and opposing counsel of the client's address, unless otherwise directed by the client.

*Commentary:* Counsel should follow the commentary set forth in Standard 8.3(b) above.



# Executive Summary



## A. STUDY QUESTIONS

The Minority Corporate Counsel Association (MCCA) was founded in 1997 to advocate for the expanded hiring, promotion, and retention of minority attorneys in corporate legal departments and the law firms that serve them. MCCA's efforts focus on the research, collection, and dissemination of information on the status of diversity in the legal profession and the use of that information to further the Association's mission.

*Creating Pathways to Diversity® — Mentoring Across Differences: A Guide to Cross-Gender and Cross-Race Mentoring* is the result of a year-long study to examine mentoring relationships in law firms and law departments to determine:

1. How lawyers build successful cross-gender and cross-race mentoring relationships;
2. How lawyers define reasonable expectations for cross-gender and cross-race mentoring relationships;
3. How lawyers build trust in cross-gender and cross-race mentoring relationships to promote open communication;
4. How lawyers develop the capability and comfort to discuss diversity issues in cross-gender and cross-race mentoring relationships; and
5. How lawyers are motivated to initiate cross-gender and cross-race mentoring relationships.

## B. KEY FINDINGS

The most significant findings of the study were:

### 1. How lawyers build successful cross-gender and cross-race mentoring relationships

- Women and minority lawyers who wanted mentors could find them if they were strategic and proactive.<sup>1</sup> Everyone who participated in this study, even those without a current mentor, had at least one mentor at some point in their careers, and most participants had more than one mentor.
- Cross-gender and cross-race mentoring relationships arose most frequently during work assignments, recruitment efforts, office and community projects based on shared interests, and bar association activities.

- Informal mentoring was the preferred format and was driven primarily by frequent interaction and proximity during work and work-related projects.
- Mentees who actively sought mentors found multiple mentors to meet a variety of development needs. They recognized that they needed different mentors to fulfill distinct needs at various times in their careers. They saw the need for men and women mentors, and white and minority mentors.
- Diversity in mentoring relationships crossed many boundaries. Many cross-gender and cross-race relationships did not have white or male mentors. Relationships included mentors and mentees who are both minorities but of different races or ethnicities, and women and minority mentors with white male mentees.
- Most of the participants in current mentoring relationships who were matched through a formal mentoring program reported positive experiences.
- Mentees who were not in current mentoring relationships sought more specific qualifications in potential mentors than did mentees with current mentors.

### 2. How lawyers define reasonable expectations for cross-gender and cross-race mentoring relationships.

- Mentors required that mentees produce excellent work product, make a significant commitment of time, show professionalism, and exhibit self-confidence in order to receive mentoring. In law firms, they also expected mentees to be sociable and participate in firm life.
- Mentors had a mental model of what makes a lawyer worth their investment of time, advice, and wisdom. Women and minority lawyers did not always fit that model because of different communication styles, behavior styles, work perspectives, and approaches to problem solving.
- In contrast, most mentees had little knowledge about mentoring at the beginning of their careers and few if any expectations.
- Women and minority associates in law firms expected to be promoted solely on merit (i.e., the quality of their work). Mentors corrected this belief by explaining that personal relationships and social involvement are also major factors in promotion decisions.

<sup>1</sup> For purposes of this study, minorities were considered to be any persons who are not Caucasian, and could include African Americans, Hispanics, Asians (including East Indians), and Native Americans.



- Junior lawyers expected supervisors to be mentors. Many supervisors did not share those expectations or acknowledge mentoring responsibilities.

### 3. How lawyers build trust in cross-gender and cross-race mentoring relationships to promote open communication.

- Successful mentoring pairs took risks, moved out of their comfort zones, and took time to form a relationship. Successful cross-cultural relationships required both mentor and mentee to make an effort to work with people who are different.
- Minority and women mentees established trust and engaged in open communication more readily with minority and women mentors than with white male mentors.
- Women communicated most easily with each other in mentoring relationships, regardless of their racial or cultural differences.
- Mentees demonstrated trustworthiness by doing high quality work, developing a reputation for excellence and reliability, aligning behavior with workplace culture, performing confidently, and showing enthusiasm for the practice of law.
- Mentors demonstrated trustworthiness by reaching out to women and minority mentees; extending their trust to mentees through stretch assignments; making mentees feel included and connected; and proving their interest in the mentees' learning and development by giving information about organizational culture, opportunities to excel, challenging work, feedback, and career advice.

### 4. How lawyers develop the capability and comfort to discuss diversity issues in cross-gender and cross-race mentoring relationships.

- Minority mentees were more comfortable talking with minority mentors about race and diversity issues, even if they were from different minority groups.
- Mentees, including white and minority women and men, were more comfortable talking with women than male mentors about work/life and gender issues.
- White mentors who successfully discussed race and gender issues with women and minority mentees made a concerted effort to listen to and learn from mentees; find mentees opportunities to feedback, encouragement, and public support.
- Discussion of race and gender diversity was often avoided when one of the parties was white, even in mentoring relationships that were otherwise strong.

### 5. How lawyers are motivated to initiate cross-gender and cross-race mentoring relationships.

- Mentors were motivated by self-interest as much as by personal satisfaction or concern for others. They saw mentoring as an investment in developing and retaining the outstanding, high-performing lawyers needed to serve clients and ensure the organization's business success.
- Minority mentors actively reached out to minority new hires and minority summer interns in both law firms and corporate law departments.
- Women and minority mentees were motivated to find cross-gender and cross-race mentoring to learn and expand their technical abilities, achieve inclusion in the organization, obtain high-visibility work, and gain access to leaders and powerful networks.
- Employers fostered cross-gender and cross-race mentoring by creating an environment that supports diversity (e.g., by sponsoring mentoring and diversity initiatives). Mentors and mentees expressed a desire for more support in terms of written guidelines, training, and program coordination than their employers currently provide.



# What is the Significance of the Findings?



This study shows that women and minority lawyers who proactively seek mentors can find them. The findings in each of the study areas illustrate how lawyers can build and maintain successful mentoring relationships across gender and race.

## A. STARTING AND BUILDING MENTORING RELATIONSHIPS

The study results were clear: women and minority lawyers are capable of finding one or more mentors if they are strategic and proactive in seeking them. That is not to say that finding a mentor is easy for everyone or that everyone who wanted a mentor found the one they desired. Some study participants were unable to find the specific type of mentor they wanted, and were consequently not in a current mentoring relationship. For example, some mentees sought a member of the same minority group who could champion their advancement or introduce them to business contacts, but mentors with those qualifications were not available in their practice area or organization. Successful lawyers in our study who were unable to find mentors with specific, desired qualifications did find other suitable mentors who helped them achieve professional and development goals.

### 1. The wide range of cultural differences in mentoring pairs

One of the pleasant surprises of the study was the considerable number of mentoring relationships involving mentors and mentees of different minority groups. Study participants evidenced a great variety of cross-race, cross-cultural, and cross-gender matches, including:

- Hispanic male mentors with African American male and female mentees;
- Hispanic female mentors with Asian male mentees;
- African American male mentors with white female mentees;
- An Asian female mentor with Hispanic and African American female mentees; and
- White female mentors with white male mentees.

Even within these pairings, there was additional diversity. For example, the category “Asian” refers to many nationalities, such as, Indians, Pakistanis, Chinese, Korean, Thai, Vietnamese, and Pacific Islanders, although each of these groups is culturally distinct. A mentor and mentee might both have been Asian, but have little in common with each other in terms of religion, history, language, or culture.

### 2. Entry points for the formation of mentoring relationships

In spite of some skepticism among participants about formal matches, 90 percent of those in formal mentoring programs were satisfied with those relationships. Problems that arose in formal relationships usually stemmed from a poor matching process, such as the mentor who was “forced” into a match with a mentee considered incompetent and without a future in the firm. Other problems with formal mentoring were attributed to a lack of follow-up and training, which left mentors and mentees with little or no guidance regarding how to develop the relationship.

The majority of participants expressed a preference for informal mentoring relationships, and most participants (65%) were in such relationships. Informal mentoring relationships across race and gender began in a variety of ways:

- Most commonly, mentoring relationships began as people worked together, usually when a new or junior lawyer worked with a more senior lawyer on a client matter. In law firms, most of these relationships were between lawyers in the same practice group, department, or area of specialization. In corporate law departments, most mentee-mentor pairings occurred between lawyers, with internal clients, and less frequently, with outside law firms and vendors.
- The second most common entry point was the recruiting process. Many mentoring relationships arose between job candidates and the lawyers who recruited them as they explored a possible “fit” between the candidate and the organization. In law firms, they often arose between summer associates and members of the hiring or summer associate committees. Relationships that began this way during the recruiting process often continued when the candidate joined the firm or corporation. Some even continued when the candidate took a job elsewhere.
- A third group of relationships grew through shared personal or professional interests when mentees and mentors were in the same firm or company but from different practice areas. Shared interests usually involved collaboration on work-related special projects, committees, pro bono cases, community activities, women’s forums, or diversity programs.

- Some mentors, especially minority mentors, appreciated the importance of mentoring, and energetically pursued mentoring relationships with new lawyers. They did this within their firms and corporations, and in bar associations, most notably in minority bar associations.

At all of these entry points, mentoring relationships developed as people interacted with each other. Most of the time, this happened while they worked together, but sometimes, mentors and mentees had to create opportunities to meet or talk( e.g., a series of casual lunches). As they got to know each other, they discovered that they shared common values, practice goals, and perhaps personal interests. The relationship was especially likely to expand into a mentoring relationship if the two individuals had compatible work styles or personalities. Their personal relationship turned to mentoring — although the word “mentor” might never be uttered — when one person reached out to the other to request or offer assistance.

### 3. Someone like you or someone different? Benefits of both in mentoring relationships

The race and gender of a mentor and mentee did not always matter. In some circumstances, what was most important was the mentor’s willingness and ability to help the mentee. For example, several minority mentees felt that white male mentors could provide greater access to clients, high-visibility projects, and inner circles of organizational power and influence. One participant remarked, *“As the only woman it was important for me to have a senior male supervisor who could guide me through that system, show me the ropes, how to handle myself in that world, as well as technical aspects of my job.”* White men and women frequently controlled access to work assignments that minority mentees wanted in order to develop legal skills, learn a practice area, gain client exposure, or receive more responsibility. Many of these white men and women subsequently became their mentors.

Participants benefited from being in both diverse mentoring relationships and same-gender or same-race relationships. Diverse relationships expanded their thinking and perspectives, altered incorrect assumptions and stereotypes, and led to a deeper understanding for people. These relationships made participants aware of important issues that they otherwise would not have considered, or would have looked at from a narrower point of view. *“Being on the recruiting committee with my Asian mentee, he points out and keeps me honest when we bring up the fact that certain candidates look good, but they are too quiet and reserved. He makes us remember we have to take charge in the interview and be more directive. We get better results that way.”*

On the other hand, most minority and women mentees benefited from having mentors of the same gender or race. Same-gender and same-race mentors served as role models, confidantes, and advisors on personal aspects of professional life. They could relate to mentees’ concerns about stereotyping, sexism or racism, and provide “reality checks” about gender- or race-sensitive issues. They also inspired and reassured women and minority mentees that their differences will not prevent them from succeeding in the organization. *“When you look around and you are different from everybody else, it’s not easy to recognize what is getting in the way of your success.”*

### 4. The value of multiple mentoring relationships

Successful study participants had been in multiple mentoring relationships, either concurrently or at different times in their careers. At least one of their mentors had been or was currently a white male. This was true for both men and women and for individuals of all races. A network of mentors, acquired over time, allowed lawyers to have mentors of both genders and various races and organizational positions. Many of these mentoring relationships lasted for many years. Some very senior lawyers in the study group still relied on attorneys who had been their mentors for several decades.

Mentees who had multiple mentors reported high satisfaction with their mentoring relationships. They recognized that they needed different kinds of mentors for separate reasons at various times in their careers.

**They did not restrict their search for mentors to a particular race or gender, and understood the importance of networking in order to find diverse mentors.** Some mentees also acted as mentors to law students, summer associates, and less experienced lawyers. Being a mentor gave them additional insight into what mentors look for in mentees. They used this knowledge to enhance relationships with their own mentors.





## B. CREATING REASONABLE EXPECTATIONS FOR MENTORING

Ideally, mentors and mentees have clear, realistic, aligned expectations, and communicate those expectations to each other. In reality, however, their expectations often vary and remain unspoken.

### 1. Mentors know what they expect from mentees

Mentors in the study had very clear expectations for the people they were willing to invest in. Women and minority mentees often did not know what those expectations were. **This lack of knowledge about what mentors expect may be one of the significant reasons why women and attorneys of color do not experience mentoring to the same degree as white males.**

**Mentors wanted mentees whom they saw as “winners” or “keepers.”** In law firms particularly, mentors viewed their time and energy as expensive assets and the mentoring process as an investment of those assets. They were only willing to make such investments in lawyers who they believe will produce a high return (i.e., someone who is likely to become a successful lawyer as *the mentor defines success*). Usually this meant mentees must appear confident, be able to communicate clearly orally and in writing, produce impeccable work product, and show drive, commitment, and work habits that are compatible with the mentor's. If a lawyer did not fit this model, differences were misperceived as deficiencies, and mentoring was either not offered or withdrawn. Mentors gave mentees little time to prove themselves; they were neither patient with mentees nor inclined to give second chances. Several mentors stated it was best to “cut off” struggling mentees sooner rather than later.

Mentors had these expectations for all lawyers, regardless of their gender or minority status. However, women and minority mentees often did not know what the mentor was looking for. *“One of the associates has the makings, but someone needs to help him connect the dots and let him know that unless he adopts certain behaviors he won’t be perceived as successful.”* Many of these associates were strangers to the culture of law practice and had no role models or guides to explain these expectations to them. They were unfamiliar with the organization's political or social dynamics or its unwritten norms and customs. If they were new to law practice, they had to learn those expectations at the same time they were learning to be lawyers. One of the most valuable functions that mentors could perform was explaining the organization's culture and expectations to them.

### 2. Successful women and minority mentees know what they expect from mentors

Early in their careers, many women and minority lawyers did not realize that they needed mentoring. They assumed supervisors and managers would facilitate their learning, development, acceptance, and advancement in the organization. Many mentees became aware of the value of mentoring when they realized that a more senior lawyer was taking a special interest in their learning and progress. Once mentees understood how mentors could help them, they became purposeful in seeking mentoring relationships.

Some mentees were very direct in discussing their expectations with mentors. The principal areas for which mentees sought mentors were:

- Guidance and assistance with work issues;
- Advice on how to navigate the office;
- Feedback on work performance and professional behavior;
- Role models and career guidance;
- Learning how to handle difficult lawyers and clients;
- Advice about work/life issues;
- Access to decision makers and clients;
- Sponsorship for advancement and partnership;
- Overcoming isolation; and
- Advice about dealing with diversity concerns. Mentees primarily sought mentors who would give them the kind of assignments, feedback, and encouragement that spurred them to do their best. They wanted to work on projects that would make managers and leaders notice them as capable and promising lawyers. As one mentee put it, *“Getting into the right project at the right time can totally change your life.”*

### 3. When the mentor is also a supervisor: dual role confusion

Supervisors and mentors do not necessarily have the same commitment to junior lawyers' development. Supervisors' primary concern is getting the work done for the client. They may view the lawyers they supervise simply as the means for doing that work. A mentor's interest goes beyond the work product. Mentors take an interest in the junior lawyers' learning and growth. Mentors use the developmental opportunities provided



by work experience to help teach, encourage, and advance the interests of the junior lawyer. Unfortunately, many junior lawyers do not understand this distinction. They expect supervisors to take an interest in them and help them succeed.

Study participants recognized that there is a potential conflict when a mentor is also a supervisor. In the study group, 42 percent of mentors and 45 percent of mentees in current mentoring relationships reported that having a mentor who was also a supervisor posed a moderate challenge to the relationship. The potential conflict arises because the mentor-supervisor allocates work assignments, evaluates the mentee's performance, and contributes to decisions on promotion. This makes it difficult for mentor-supervisors to be impartial or non-judgmental, and difficult for mentees to be open about their insecurities or concerns. Mentees may feel too intimidated to confide in dual-role mentors about such issues such as the nature or quality of the work they receive or problems with the supervisor.

Nevertheless, in spite of the potential for conflict, successful mentees in this study were willing to take on whatever challenges this arrangement might bring. It was more important to them to have mentors who would give them good work and help them become better lawyers. *"I think it turned into more of a mentoring relationship when I started to ask him a lot of questions and demonstrated to him that I was really serious about learning this area of law."* They also recognized that any potential sponsors for advancement would not advocate on their behalf unless they had confidence in the quality of the mentee's work.

#### 4. The organization's expectations for women and minorities to engage in diversity activities

Women and minority lawyers often found themselves in a dilemma that compromises their ability to acquire good mentors. Law firms want to attract women and attorneys of color to meet clients' expectations for diversity and ensure that diverse lawyers are represented on committees and participate in organizational activities. However, engaging in recruiting, diversity initiatives, and other time-consuming activities reduces the time available for learning the basic practice skills needed to become excellent lawyers. Women and minority attorneys who participate in too many of these activities miss training programs, so they learn less than their peers. These activities leave them less time for their client work, which may lead to lower quality work product, and in law firms, insufficient billable hours. All of this can lead to a negative perception of their worthiness to mentors. One participant called this the "trap" of becoming the organization's "poster child" for diversity.

### C. BUILDING TRUST

#### 1. Mentors' and mentees' discomfort about race and gender differences inhibited outreach

Generally, one of the barriers to cross-gender and cross-race mentoring is the discomfort that people feel being in a mentoring relationship with mentors or mentees of a different gender, race, or culture. The degree of discomfort was dependent upon the kind of cross gender and cross-racial match. Study participants built trusting relationships by dealing with and overcoming their initial discomfort, if it existed at all.

#### Men Mentoring Women

Many male lawyers felt that it was too hard, uncomfortable, and unduly complicated to be mentors to women. They feared that the female mentees or others in the organization might misperceive the mentoring relationship as more than simply professional. They were concerned about possible claims or lawsuits for discrimination or sexual harassment. They worried that they might make remarks that could be misunderstood or taken out of context, leading to a bad reputation for them or the firm. Several male mentors also felt that they could not appreciate career issues from a woman's perspective and therefore, could not offer useful advice. Female mentors, however, did not express a similar hesitancy about mentoring men.



## Whites Mentoring Minorities

Some mentors, mainly white men, had similar concerns about mentoring minority lawyers. They worried that their questions or comments might inadvertently offend someone, or violate norms of “political correctness,” by their questions or comments. Others said that they could not appreciate a minority lawyer’s experience or truly understand what a person of color had to deal with. A few mentors were less inclined to mentor minorities for the same reason some men gave for not mentoring women — fear of discrimination claims or damaging the organization’s or their own reputation through a misunderstanding or actions taken out of context. They also felt they had little relevant advice or counsel to offer a minority lawyer.

## Limitations on Scope of Mentoring

Overall, this discomfort did not prevent white mentors from forming successful mentoring relationships with minorities, or male mentors from being mentors to women. But it did limit the functions that these mentors could provide. In particular, it made some mentors feel incapable or unwilling to deal with people who were different, and it interfered with their ability to give honest feedback. One example was a male mentor who made an effort to deal with his concern that women would “tear up” if he gave them feedback that was unfavorable. *“A mentor has a real opportunity to learn, especially if someone has a really different background. We have to be open enough and curious enough to explore that part of the relationship. I tell my mentees that if I say anything offensive, let me know.”*

Mentees in our study group expressed a low level of discomfort about cross-gender and cross-race mentoring relationships (only 7 percent expressed a concern about their degree of rapport and camaraderie). Those women and minority mentees who felt uncomfortable raising diversity-related issues with white mentors stated the following reasons for their discomfort:

- 0 Making the mentor feel uncomfortable;
- 0 Being perceived as a troublemaker or complainer;
- 0 Being perceived as lacking professional ability;
- 0 Being misunderstood as seeking preferential treatment;
- 0 Calling attention to themselves as “different”;
- 0 Finding mentors to be unsympathetic or indifferent;
- 0 Having their confidences revealed (even if confidentiality was promised); and
- 0 Being rebuffed or resented for bringing up sensitive issues.

## 2. Elements of trust

For study participants, trust involved a belief in the ability of the mentor or mentee to serve their needs and interests. Trust formed when mentors and mentees saw each other as competent, reliable, committed, and honest (See Tables 2 and 3). Mentees, for example, wanted to know that the mentor was a “go-to person” who can get things done; would accept them for who they are; would not be judgmental or negative if the mentee sought help or asked questions; and would speak up for them if the need arose. For their part, in order to do these things for their mentees, mentors needed to know that the mentees were capable, diligent, and performing well.

Mentees had mixed views about the importance of confidentiality in relationships matched through formal mentoring programs. Some felt that the promise of confidentiality was critical and reassured them that they could confide in mentors without fear of disclosure or adverse repercussions. Others, however, were skeptical about any promise of confidentiality, and said they would not confide in a partner mentor in reliance on that promise alone. **For the mentees in this study who were in successful mentoring relationships, only 30 percent mentioned a “lack of confidentiality” as a moderate challenge in their relationship. But for those not in current relationships, 100% mentioned this as a moderate to extreme challenge.**

**Table 2.**

**Elements of Trust: What Mentors Expect From Mentees**

- **Competence:** the mentee demonstrates the intelligence, drive, interpersonal skills, and work ethic to be an excellent lawyer.
- **Reliability:** the mentee can be depended on to get the work done, please the client, and help the mentor out when needed.
- **Commitment:** the mentee is committed to his or her own success, to the mentoring relationship, and to the firm or company.
- **Honesty:** the mentee is willing to take reasonable risks, will be honest about needs and concerns, and will seek help and feedback.

**Table 3.**

**Elements of Trust: What Mentees Expect From Mentors**

- **Competence:** the mentor is capable of providing the help the mentee needs (e.g., skills training, contacts, influence, empathy).
- **Reliability:** the mentor can be depended on to help the mentee, and will not betray the mentee's confidences.
- **Commitment:** the mentor is interested in the mentee as an individual and in helping the mentee succeed; has the mentee's best interests in mind; and will not belittle or judge the mentee for what he or she does not know.
- **Honesty:** the mentor will give the mentee honest and constructive feedback and help the mentee to learn.

### 3. Implications of gender and race differences in establishing trust

Many participants experienced little or no discomfort with each other in spite of their differences. This was especially true in relationships between women and between members of two different races or ethnic groups. When mentors or mentees did experience discomfort, they demonstrated an ability to step out of their comfort zones and reach across their differences. As they got to know each other, they discovered that they shared similar interests and values.

Relationships that cross race or gender lines have the potential for added risks and complications. Some mentees expressed the risk as being rejected by the mentor, finding the mentor indifferent to the mentee's concerns, or feeling incompetent with a prospective

mentor. It is easier to approach someone who is similar in some way that makes the effort less risky and increases the chances that their response will be positive. As one mentor plainly put it, *"Guys are more comfortable with guys, women are more comfortable with women."* Similarly, people of the same race or similar cultural background often feel more at ease with others of the same ethnicity. They presume that people from the same gender, race, or ethnic background have common life experiences.

That presumption may or may not hold true. Being of the same race or gender can make starting a relationship easier, but "sameness" may not be enough to form a mentoring connection, and just as differences will not necessarily prevent one. One example was an openly gay female woman who was formally matched in a mentoring program with an openly gay man. Other than the fact that both were homosexual, they found no other basis for forming a relationship. They keep in touch with each other, but mutually decided to forego the mentoring match.

Mentors and mentees who developed trust in each other managed to avoid stereotypes and untested assumptions that might otherwise have interfered with mentoring or led to mistakes in selection of mentors. For example, many minority lawyers might assume that mentors could not understand someone from a different race or culture. Yet several study participants had spouses of different races and were acutely sensitive to the issues that minorities face. Perhaps the most common assumption expressed was that all women partners are interested in talking about work/life and/or family issues. Some mentees were disappointed when their women mentors did not share these interests.

An interesting finding of this study was that women and minorities formed relationships more easily with each other. White women, and minority men and women, shared the experience of being outside the mainstream white male culture. Because of this common experience, they felt a higher degree of affinity with one another, which made relationships easier to start. Minority mentees could more comfortably discuss race issues with minority mentors, even if they were of different races or cultures, than with white mentors. One mentee noted that he and his mentor have different accents, which sometimes made it hard to understand each other. But they could poke fun at themselves, which helped their relationship grow.

Many women reported feeling a common bond with other women, especially if they both had young children. This bond transcended racial differences. Several mentees, including white and minority men, reported that they had chosen female mentors with young children so that they could more easily discuss work/life balance or unconventional career paths.



## D. COMMUNICATING ABOUT DIVERSITY ISSUES

Specifically with respect to discussions of race, barriers existed mostly where one of the mentoring pair, usually the mentor, was white. In many of these cross-race relationships, participants comfortably discussed many kinds of professional and personal matters, but they avoided conversations about race or diversity. In some relationships, white mentors were uncomfortable discussing race issues with minority mentees, and in others, minority mentees felt they could not confide in white male mentors. The unaddressed issues most frequently mentioned by mentees were their insecurities or uncertainties about law practice, the impact of race or gender, and non-traditional career options. The problem was described by one mentee as having “half a mentor” because certain topics were not open to discussion. *“As a mentee, it doesn’t hurt my feelings if someone acknowledges the [racial] difference between us. In some ways I like those relationships better. It makes me feel more comfortable — we’re not dancing around the issues in some artificial way. What’s uncomfortable for me is when we have to pretend that there isn’t a difference.”* As a result, neither mentors nor the organization learned what mentees were thinking about in terms of diversity issues. When the topics were viewed as off limits, some mentees concluded that the organization did not care about either the issues or its women and minority lawyers.

These findings do not mean that all mentoring pairs with a white mentor or mentee avoided discussions of race. In fact, these issues were discussed freely in many successful mentoring relationships between white male mentors and women and minority mentees. In one study pair, a white mentor and his African American female mentee explored how the mentee’s race and gender affected her professional life. He counseled her on strategies to deal with situations where she believed her race or gender was an issue. Nor do the findings suggest that all minority mentor/mentee pairs discussed diversity issues. In another study pair, with a mentor and mentee from the same minority group, the male mentor was reluctant to address issues of gender diversity with his female mentee. In most cases, though, the shared status of being “outside” the majority gave mentors and mentees of different minority groups or ethnicities an initial comfort level and presumption of trust that made conversations about race and cultural issues easier.

In cross-gender and cross-race mentoring relationships where diversity issues were openly discussed, mentors made a concerted effort to build a trusting and comfortable environment. They listened carefully and

learned from the mentee; shored up the mentee’s self-confidence; and helped the mentee find opportunities to prove their excellence.

## E. MOTIVATING FACTORS IN ESTABLISHING SUCCESSFUL CROSS-GENDER AND CROSS-RACE MENTORING RELATIONSHIPS

The primary motivators for mentoring were work-related. Mentors wanted proficient mentees to serve their clients. Mentees wanted access to and feedback from mentors with high-quality, high-visibility work experience. For work-related purposes, gender and race were not prominent factors in the development of mentoring relationships. Gender and race were often motivating factors, however, when mentoring was offered or sought for purposes of workplace orientation, social inclusion, and psychological support.

### 1. Mentors’ motivating factors in reaching out to women and minorities

When mentors identified a woman or minority lawyer with extraordinary talent and potential, their motivation in reaching out to that lawyer was practical, not altruistic. The mentor’s interest in helping that lawyer develop and advance was driven primarily by a desire to retain talented lawyers and increase the organization’s competitive advantage. *“Any time you are going to devote that much attention and energy to something, you feel like it will provide extra value to the firm and your own individual career to have some real strong people who work with you. That’s one of my real incentives.”* As one mentor pointed out, mentoring is *“an investment in the institution — if we don’t develop good lawyers, we can’t do well as a business.”*

Mentors who reached out to women and minority lawyers were also motivated by personal satisfaction and a desire to help a more diverse pool to succeed. They took pleasure in helping talented lawyers succeed. They tried to make life easier for mentees within the organization by building a supportive personal relationship and by imparting knowledge about the organization’s culture and operations. Some mentors made a special effort to mentor women and minorities because they were aware that these lawyers often had a harder time finding mentors in the organization. Minority mentors in particular knew from experience what it is like to be new to an organization and feel a sense of isolation. They were more likely to reach out to other minority lawyers to welcome them into the organization.

## 2. How employers create an environment that supports mentoring for women and minorities.

### A. Priorities and Policies

The study found that employers promoting cross-gender and cross-race mentoring as part of their diversity initiatives, create an environment that supports diverse mentoring relationships. Inside the firm or company, they set priorities, policies, and compensation that reflect the importance of mentoring and diversity. They make it a priority for influential leaders to serve as mentors. Other examples include:

- Tangible and significant awards to outstanding mentors (e.g., cash, travel);
- In-house forums for women and minority lawyers;
- Alternative career paths and flexible working arrangements for lawyers with children; and
- In law firms, billable hour credit for mentoring and diversity activities.

Organizations also show their commitment to diversity through activities beyond the workplace. They encourage and support lawyers' participation in law school and community activities that promote mentoring and diversity. Two examples are:

- Participation in a mentoring program for minority law students; and
- Sponsorship of a forum for local law students on what to expect as a minority lawyer in local law firms.

### B. Diversity Initiatives

Many organizations undertake diversity initiatives that feature training and cultural events that raise awareness of diversity. Effective diversity training programs enable people to raise difficult or sensitive issues about diversity without fear of being penalized or shunned. They create an environment where speaking out about diversity was acceptable and normal. Study participants felt that such programs in their organizations were valuable, but that they tended to be too abstract and general, with little immediate application to their everyday work lives. They wanted programs that allowed them to discuss diversity on a more personal one-on-one level in the workplace.

### C. Mentoring Programs

Formal mentoring programs provide access to mentors. They are a supplement, not a substitute, for informal mentoring. Participants found special value in formal programs because these programs:

- Ensured that all lawyers have at least some exposure to and experience with a mentor;
- Are particularly helpful in the early stages of a lawyer's career, when mentees do not know how to initiate a mentoring relationship with the right person; and
- Make mentoring relationships across gender and race normal rather than exceptional.

This last point is of special importance for women and minority mentees. For women, it lessens the likelihood of sexual innuendo. For minority lawyers, it reduces apprehension in potential mentors as cross-race mentoring relationships become accepted and more commonplace.

It is important to be realistic about what formal mentoring programs can accomplish. A formal program can jump-start the process, but the individuals must make a personal investment to take it to the next level.

**In addition, although formal mentoring programs are valuable, they are not sufficient to meet most mentees' needs. Lawyers should be encouraged to find additional mentors informally.**

### F. CHARACTERISTICS OF SUCCESSFUL CROSS-GENDER AND CROSS-RACE MENTORING RELATIONSHIPS

In all successful mentoring relationships, both parties respect, trust, and take a personal interest in each other. They make an effort to discover each other's strengths, needs, values, and interests, and are committed to making their relationship work. The mentee is eager to learn from the mentor; the mentor is happy to impart encouragement, knowledge, and wisdom. Both parties are driven to acquire the information and knowledge they need to succeed. These characteristics are the same whether the relationship is formal or informal and whether the mentor and mentee are of the same or different genders, cultures, or races.

Some of the strategies that study participants used to establish successful cross-gender and cross-race mentoring relationships include:

- Using work and work-related activities as a natural starting point to begin their mentoring efforts;
- Casting a wide net, they sought to establish mentoring relationships across many venues: internal departments within law firms; functional groups within corporate law departments and outside counsel; and within bar associations;
- Searching for common interests and values instead of focusing on surface differences;
- Among women and minorities, forming bonds through their shared status as outsiders to the mainstream culture of their employers, where white males were in the majority generally, and in particular at organizational leadership levels;
- Making efforts to learn about each other;
- Using empathy to understand each other's concerns;
- Being clear about their needs and expectations;
- Avoiding stereotypes and untested assumptions about each other; and
- Risking discomfort to make the relationship work.

## G. BARRIERS TO SUCCESSFUL CROSS-GENDER AND CROSS-RACE MENTORING RELATIONSHIPS

Researchers have reported obstacles in the legal workplace that impede mentoring for all lawyers, and note additional, unique challenges for women and minority lawyers. To get work, these lawyers have to overcome prejudgments and low expectations about their abilities. Socially, they have to “fit in” despite their differences. Culturally, they have to adapt to a new and unfamiliar environment. Institutionally, they have to deal with and overcome obstacles to inclusion and advancement.

Our study group did not discount the importance of these challenges, but they did not dwell on them or use them as reasons not to move forward. They mentioned seven specific challenges to cross-gender and cross-race mentoring:

- White mentors' discomfort about mentoring minority lawyers;
- Male mentors' discomfort about mentoring women lawyers;
- Mentees' discomfort about discussing gender or race with mentors unlike them;
- Stereotyping by mentors and mentees;
- Minority and women lawyers' lack of appreciation of the value of mentoring;
- Mentees' perceived lack of suitable mentors; and
- Lack of institutional support for diversity and mentoring.

Not all cross-gender and cross-race mentor/mentee pairs experienced all of these challenges. In addition, participants noted other factors besides gender and race that interfered with mentoring relationships, including age and class differences:

- Younger lawyers placed greater value on making time for family life than did many of their mentors;
- Younger lawyers had different attitudes toward work than many of their mentors;
- Class differences hindered relationships with lawyers from lower socio-economic classes or rural backgrounds, or who are immigrants or first-generation Americans; and
- Lawyers without the “right” credentials (e.g., degrees from elite colleges or law schools) were subject to bias. This was less pronounced for in-house lawyers, because corporate employers tend to look for lawyers with proven ability and relevant experience in a field of practice, not law school or class rank.

Time is often cited as a barrier to mentoring because the pressure of work, and in law firms, the lack of billable hour credit for mentoring, makes it difficult to schedule meetings and to interact casually. This study got mixed results about the impact of time constraints on mentoring. Only 30 percent of the mentors in current mentoring relationships stated that time was a challenge, while over 70 percent of mentees said that it was.



- White mentors' discomfort about mentoring minority lawyers;



# MENTORING PROGRAM

## Mentor Questionnaire

Mentor: \_\_\_\_\_ Mentee: \_\_\_\_\_

**In the past 90 days did this mentee (please check all that apply):**

- ☐ Maintain a manageable caseload
- ☐ Notify you of his or her first few 72 Hour Hearings
- ☐ Notify you of court events that you may observe
- ☐ Cooperate with the requirements of the Mentoring Program
- ☐ Maintain a manageable caseload
- ☐ Accept a sufficient number of cases to continue making progress in this area of law. If not, please explain:

Do you have any concerns regarding this mentee and/or his or her progress?

*Thank you for completing this questionnaire. Kindly email this form to [caflattorney@publiccounsel.net](mailto:caflattorney@publiccounsel.net). Thank you very much for your cooperation.*

# MENTORING PROGRAM

## Mentee Questionnaire

Mentor: \_\_\_\_\_ Mentee: \_\_\_\_\_

How many CAFL cases have you accepted? C&P \_\_\_\_\_ CRA \_\_\_\_\_

**In the past 90 days, did your Mentor (please check all that apply):**

- ☐ Make him or herself available for the Initial Mentor Meeting.
- ☐ Attend your first few 72 Hour Hearings.
- ☐ Observe other court events.
- ☐ Return your phone calls.
- ☐ Meet with you regularly.
- ☐ Provide feedback and assistance.

Do you need any additional support / assistance from your Mentor? Please describe:

*Thank you for completing this questionnaire. Kindly email this form to [caflattorney@publiccounsel.net](mailto:caflattorney@publiccounsel.net). Thank you very much for your cooperation.*

# MENTORING PROGRAM

## Mentor Questionnaire

Mentor: \_\_\_\_\_ Mentee: \_\_\_\_\_

**In the past year did this mentee (please check all that apply):**

- ☐ Notify you of court events that you may observe.
- ☐ Maintain regular contact with you.
- ☐ Cooperate with the requirements of the Mentoring Program.
- ☐ Maintain a manageable caseload.
- ☐ Accept a sufficient number of cases to continue making progress in this area of law. If not, please explain:

Do you have any concerns regarding this mentee and/or his or her progress?

*Thank you for completing this questionnaire. Kindly email this form to [caflattorney@publiccounsel.net](mailto:caflattorney@publiccounsel.net). Thank you very much for your cooperation.*

# **MENTORING PROGRAM**

## **Mentee Questionnaire**

**Mentor:** \_\_\_\_\_ **Mentee:** \_\_\_\_\_

**How many CAFL cases have you accepted? C&P** \_\_\_\_\_ **CRA** \_\_\_\_\_

**In the past year, did your Mentor (please check all that apply):**

- ☐ Make him or herself available for the Initial Mentor Meeting.
- ☐ Observe other court events.
- ☐ Return your phone calls.
- ☐ Meet with you regularly.
- ☐ Provide feedback and assistance.

Do you need any additional support / assistance from your Mentor? Please describe:

*Thank you for completing this questionnaire. Kindly email this form to [cafltraining@publiccounsel.net](mailto:cafltraining@publiccounsel.net). Thank you very much for your cooperation.*



## C&P CHECKLIST

Attorney: \_\_\_\_\_ Date: \_\_\_\_\_

Client Name: \_\_\_\_\_ PH date: \_\_\_\_\_

### Court Investigation status

1st FCR date: \_\_\_\_\_ Notice FCR rec'd \_\_\_\_\_ reminder to client?

Last contact w/client \_\_\_\_\_ Service Plan dates \_\_\_\_\_

Last child client visit

case opening letter sent? sw letter; client introductory letter, court investigator letter, CASA letter? Revoke releases?

Ongoing contact/correspondence with client

### RECORDS

DCF records date requested \_\_\_\_\_ Date Rec'd \_\_\_\_\_ Updates needed? \_\_\_\_\_

Request by \_\_\_\_\_

Other records requested, received or needed:

Has client signed releases for counsel?

Has counsel followed up with providers?

Has client signed releases for DCF?

### VISITS

Parent/child visits (frequency)

How are visits going?

Sibling-frequency

**Potential client issues** e.g., MH, substance abuse, dv, ADA

Access services, referrals?

Is paternity established?

Any collateral cases?

Is there an ICWA or ICPC issue?

**EXPERTS** needed? bonding, special needs, evaluation, other

Motion for funds filed?    Approved?    Retention letter sent?

**CHILD(REN)**

Any special needs

Are they being addressed?

Advocacy needed

Records needed

Education issues

Is client invited to school meetings, doctors, placement mtgs?

Placement- foster home, program, family?

Need to advocate for any services (even if represent parents)?

**ADVOCACY**

AOD, visitation, placement, discovery or other motions that should be considered?

Fair hearing or grievance requests

Other advocacy

**FILE/RECORDS**

Runsheets, contacts info, addresses, child client info, time records

## **TRIAL CASES**

Status of discovery - all motions to compel should be filed at least 3 months prior to trial

Prepare pretrial memo -

- ensure issues are case specific

- proposed stipulation re any facts?

Motions to Strike filed? Any other MIL? Witness summonses sent

Expert witnesses - notified other counsel?

Direct exam drafted? (exhibits to be introduced? Review foundations)

Cross questions drafted? (exhibits to be introduced? Review foundations)

Evidentiary issues recognized and researched

Trial notebook

- Exhibits

- Return of service for summonses

Prepare memorandum on evidentiary issues

Have evidence cheat sheet

Have cases used in arguments handy

Contact sheet for all witnesses