

## CAFL Appellate Certification Training

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### Sample Introductions

#### Introduction (Example 1)

The Juvenile Court terminated Father's parental rights based exclusively on the hearsay statements of an incompetent, developmentally-delayed child who has a functional age of four, a history of fabricating horrific, detailed, and untrue stories, a craving for adult attention, and a seizure disorder that causes visual delusions.

The child never testified. Father challenged her competency, DCF conceded her incompetence, and a court clinician agreed. Still, the judge admitted the child's hearsay statements in evidence through her treating clinicians who improperly vouched for her credibility and testified that they believed she had been sexually abused by Father.

That was DCF's only case against Father, a former DCF foster parent with no criminal record, substance abuse history, or mental health history.

Introduction (Example 2)

Judge: I'm not going to tell you again. Sit down, counsel.

Mother's Atty: Your honor, I'm just objecting to the hearsay.

Judge: It's not hearsay. I've already ruled on this.

Mother's Atty: Your honor, this social worker can't testify to what another person . . .

Judge: She can if I say she can. Now sit your butt down and stay down. (Tr. II, p. 40).

The trial judge treated Mother's counsel like this after almost every objection. Indeed, counsel was correct here and at other times when he was abused by the court; the social worker's testimony was hearsay for which there was no exception. Such ill-treatment of counsel was not just a series of evidentiary errors. It shows bias, it is a structural error, and it requires reversal of the termination decree.

Introduction (Example 3)

The judge extensively questioned Mother during the trial to terminate her parental rights. In fact, he asked her over 1,000 questions. The four attorneys *combined* only asked 725. This was a usurpation of the attorneys' roles.

Such aggressive participation by the judge was not merely harmless error. The judge acted as a prosecutor, grilling Mother on substantive matters relating to her fitness. The judge's actions demonstrated bias against Mother, and, for that reason, constituted structural error. The termination decree must be vacated.

#### Introduction (Example 4)

A parent is entitled to a fair termination of parental rights trial, one in which the judge - the trier of fact - acts as a neutral arbiter. But that is not what happened in this case. During this trial, the judge repeatedly interrupted witness examinations, often to make, or to reinforce, a point of his own. Mother's counsel could not examine her to establish a theory of the case, because the judge repeatedly inserted himself into the questioning. DCF didn't need to cross-examine at all; the judge took over that role. Such actions by the court are unacceptable.

This type of judicial conduct contributes neither to the truth-seeking process nor to the perception of fundamental fairness that is essential if litigants and the public are to have confidence in our justice system. Where

the questioning was so pervasive, and often prosecutorial, Mother cannot be said to have received a fair trial; judicial bias undermines the entire proceeding. Therefore, the termination decree must be vacated.

Introduction (Example 5)

- Q: Did you really miss eight visits in a row with the child?  
A: Yes . . . I think I did.  
Q: Don't you think that has a lasting impact?  
A: I suppose.  
Q: A bad impact, right?  
A: Not a very good one. I felt bad for him every day.  
Q: So do you acknowledge, then, that it was harmful for the child not to see you all that time?  
A: Uh huh.  
Q: And it speaks to your fitness, don't you think?  
A: (crying) Yes. I know it does.

This exchange is not DCF's cross-examination of Mother; it is the *judge's* cross-examination of Mother. And that exchange was not an isolated incident; the judge asked Mother over 1,000 questions - more questions than all of the four attorneys combined. Far from being a neutral arbiter, the judge acted as a prosecutorial adversary. Such participation by the court was not harmless. It shows bias, it is a structural error, and it requires reversal of the termination decree.

Introduction (Example 6)

The trial court terminated Mother's parental rights based almost entirely on the determination that her husband - a Level 3 sex offender - presented a risk to her sons Seth (age 7) and Simon (age 3). Mother's husband had sexually abused his own daughter 12 years before trial. DCF presented no specific evidence - and the judge made no specific findings - that the husband had sexually offended against anyone in the intervening years or had ever offended against, or presented any risk of harm to, male children. Indeed, the husband's clinical pedophilic disorder diagnosis specifies his attraction only to girls.

The court could not permissibly infer a risk to the boys because the husband's offenses were so old, and the clinical literature fails to support an inference that he might offend against boys. It was DCF's burden to provide this evidentiary link, but it did not because it could not. And because the evidence at trial failed to show that Mother's husband posed any risk of harm to the boys, her refusal to separate from him could not render her unfit.

This is a single-issue case. Mother had no substance abuse, mental health, anger management, or other problems that rendered her unfit either alone or taken together. She had a

perfect visitation track record over the course of four years. She was substantially compliant with her DCF service plans other than the "tasks" related to leaving her husband. The trial court's termination of her rights, based exclusively on her decision not to leave him, was therefore erroneous, and remand is necessary.

#### Introduction (Example 7)

Father was born deaf and can communicate fluently only through American Sign Language ("ASL"). As a result, DCF, to meet its obligation to make reasonable efforts to reunify the family, had to tailor its services to meet Father's needs.

But it didn't. DCF failed to assign social workers with the knowledge or training necessary to understand or meet the needs of a deaf parent. DCF failed to provide Father with the most basic of all accommodations - communication access through the use of interpreters - all the while conceding that Father and his Children benefited when interpreters were present. And DCF failed to identify and refer Father for services accessible to the deaf in a timely manner.

DCF's legal obligation to provide narrowly tailored services for disabled parents is beyond dispute. The Americans with Disabilities Act ("ADA") requires that DCF ensure that no parent is excluded from participating in or benefitting from its

programs and services on the basis of his disability. And state law requires that, before DCF can seek to permanently sever a parent's relationship with his child, it must first make reasonable efforts to make reunification possible by providing that parent with services accommodating his disability. Still, DCF excluded Father from participating in services and made little effort to accommodate his obvious disability.

DCF cannot be permitted to take children away from a deaf parent and then ignore his special needs. Because DCF failed to meet its state and federal obligations - failures that were brought to the trial court's attention throughout this case - Father did not have an adequate opportunity to remedy his parental deficiencies before his termination trial. Thus, the trial court could not properly assess whether this Father was fit to parent his Children. The court should, therefore, have deferred a trial until DCF followed the law. Or, if the court insisted on trying the case, it should have found that his unfitness was merely temporary. The termination decrees should be vacated.

Introduction (Example 8 - appellee)

Joseph P. (Joseph) was born with methamphetamine and cocaine in his system. His mother and father left the hospital

while he was in the nursery being monitored for withdrawal symptoms. They went out on a "buy run" and never came back.

Since that day, DCF has scheduled 38 visits between Joseph, Mother, and Father. They only attended 11 of them, and the last one they attended was three months before trial. They have not attended any services to address their substance use.

Joseph went home from the hospital with his foster mother, and he has lived with her since that day. He has many medical needs, and she has met them all. Joseph asks this Court to uphold the termination decree and allow him to be adopted by his foster mother, the only parent he has known since birth.