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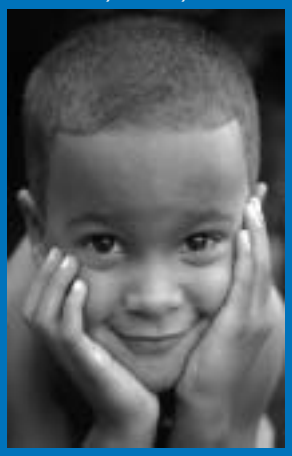

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"3 HOT TIPS" for Presenting a Successful Child Protection Case

Honorable Nicola E. Rubinow
Child Protection Session, Superior Court, Middletown, CT

To newcomers, it might seem that the trial of a Child Protection matter is a "simple" process. The petitioner, through the Department of Children and Families (DCF), generally bears the burden of proof; the affected parent may respond or not; the child's guardian will report; and the court then issues the momentous decision. Over and done with.

The initiated, however, are aware that the presentation of a successful Child Protection (CP) case is a complex process that usually starts long before trial. The CP lawyer should not assume that he or she can pick up a file at the time of appointment; stand idly by during the preliminary hearings; let the client make an uninformed decision about whether to go to trial; and then present the case based upon tea, sympathy and speculation, but nothing more. It is not that simple at all.

To encourage the novice and to polish the seasoned attorney's performance, I am pleased to share "3 Hot Tips" for presenting a successful CP case. Often identified by other names, the "3 Hot Tips" are a standard part of any trial practice curriculum. However, these techniques may be overlooked when the litigation is highly contentious and the parties seem to have entrenched positions, as is often the case in CP matters. Each of the "3 Hot Tips" is based upon Rule 1.1 of the Rules of Professional Conduct (RPC). Entitled "Competence," RPC 1.1 directs: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

How does RPC Rule 1.1 specifically affect the Child Protection attorney? The Rule applies both to the neophyte and to the veteran; a CP lawyer is held to the same ethical standard as is every other lawyer. For a case involving any particular subject, including but not limited to Child Protection matters, the requisite level of legal knowledge and skill "can be achieved by reasonable preparation" and/or the "necessary study" which will enable the lawyer to "provide adequate representation [even] in a wholly novel field." RPC Rule 1.1, Commentary.[1] "Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem and use of methods and procedures meeting the standards of competent practitioners." (Emphasis added.) RPC Rule 1.1, Commentary. Accordingly, if a matter proceeds to trial, the judge will have appropriately high expectations of the CP attorney's ability to present a meritorious case on the client's behalf.

If the CP lawyer has complied with RPC Rule 1.1, it will be apparent to the judge that he or she has done the "preparation reasonably necessary" to represent the client at a pretrial hearing, at a formal judicial pretrial conference, during negotiations or at trial. If the CP lawyer is unprepared, it may reflect upon the client as well, but not in a positive manner. Under RPC Rule 1.1, "preparation" does not mean being ready and willing to ask witnesses a stream of

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Honorable Nicola E. Rubinow: Presenting a Successful Child Protection Case

meaningless questions, seemingly for the sole purpose of having the client hear the CP lawyer's voice; it does not mean appearing at a judicial pretrial without full knowledge of the client's status, or the current status of the case. Rather, "preparation" means having set a "goal" for the outcome of the litigation; not just deciding whether or not the client should prevail after hearing and "win" the case, but determining exactly *how* the goal will be achieved. RPC Rule 1.1 implicitly requires the CP lawyer to develop a plan for identifying and using the evidence that will help the client to reach the goal. "Competent representation" means steadfastly working to meeting that goal from the time of appointment until the CP case resolves.

This emphasis upon the need for the CP lawyer to engage in pretrial "preparation" may appear to be a mere restatement of the obvious. However, from the court's perspective, this requisite to the successful CP case is sometimes lacking. The CP lawyer must be prepared to *persuade* the trier of fact that the client's position has merit. That persuasion will probably not be accomplished by fancy footwork in the courtroom alone. To achieve the client's goal, the CP lawyer must dedicate committed time and creative effort to the case, formulating an effective trial strategy long in advance of entering the courtroom. The attentive CP lawyer might want to start this process by applying the first of the "3 Hot Tips."

"HOT TIP" Number 1

When representing a client in a CP matter, the CP lawyer should take charge of the case from the beginning.

Whether representing DCF, a parent, a child, or an intervener, a CP lawyer is likely to be appointed at a very early stage of the proceedings, when the best opportunity exists for identification and amelioration of the conditions that led to DCF's involvement with the family. The CP lawyer who carefully crafts the case during the pretrial period may be able to exert significant influence on the outcome of the matter, long before trial of the principal issues takes place. In CP cases, the ultimate issue is the legal separation of parent and child, not the imposition of money damages, penal consequences or equitable orders that will result if legal responsibility is established. By its very nature, a CP case resolves a parent's long-term, constitutionally protected relationship to the child.[1] As "[t]he parent child relationship presents an ongoing dynamic that cannot be frozen in time," the CP lawyer (and the court) should consider not just the immediate conditions at issue, but "[t]he entire picture of that relationship" when addressing a CP case. *In re Brianna F.*, 50 Conn. App. 805, 814, 719 A.2d 478 (1998).

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Accordingly, our statutes generally provide a hiatus following the initial pleadings, during which the CP case has time to mature before the court is called upon to assess the merits of DCF's allegations. In the interim, the child grows, and both the petitioner and the parents have an opportunity to attempt reunification, and to remediate adjudicatory or dispositional facts. Thus, in CP cases, an additional factual context for the case is expected to develop after the pleadings are filed, but prior to trial. [2]

How does the CP lawyer accomplish the task of taking charge of the case early on?[3] The CP lawyer can commence the "reasonable preparation" required by RPC Rule 1.1. through "necessary study," performing a thorough analysis of the client, the case, and the claims of law. With this preparation, the CP lawyer can present the client with an objective, albeit preliminary, review of the facts and the applicable legal principles; working together, an initial decision can be made about what "goal" the client may realistically achieve. To succeed in this endeavor, the CP lawyer must sometimes intervene on the client's behalf, working to defuse any angry feelings that influence the parent, DCF staff, child, intervener, or service provider involved in the case. Too often, the CP client seems to feel that he or she has been the object of heinous disrespect, and the client wants to share the resulting anger in the courtroom. However, from the court's standpoint, it is the rare case in which a client's position is improved if the CP lawyer attempts to use anger as a persuasive tool.[4]

Instead, the CP lawyer should counsel the client to quell the anger, and to objectively focus upon that factual evidence which is competent to prove that the child should remain in DCF custody, or that the child should be returned to private care. The factual evidence, not a party's opinion alone, should form the basis for the CP lawyer's advice to the client and for the client's informed decision to contest or concede to an adversary's allegations in the CP case. The CP lawyer who helps the client maintain this focus early in the case, supported by a thorough understanding of the facts, is complying with the letter and spirit of RPC Rule 1.1.[5] Moreover, knowledge of the underlying case facts and the applicable law will put the CP lawyer in fine position to apply "Hot Tip" No. 2.

"HOT TIP" Number 2

The CP lawyer should use the entire pretrial period to the advantage of the CP client.

The CP lawyer can use the pretrial period to locate and encourage the development of compelling substantive evidence that supports the client's position, as well as evidence that vitiates the adversary's claims. At this stage of the proceedings, the CP lawyer can again present the client with an objective review of the facts and the law in question, and may further advise the client as to which facts can, or cannot, likely be used to his or her advantage. Working together, the CP lawyer and the client can reach a more seasoned determination about whether the pre-determined goal can realistically be achieved, or whether a new goal should be set.

How can the CP lawyer identify or cultivate relevant evidence during the pretrial period? Having followed "Hot Tip No. 1," the CP lawyer is already quite knowledgeable about the client and the case. This knowledge enables the CP lawyer to make positive use of the tool known as the "specific steps" during the pretrial period, to help move the case in the desired direction.[6] For instance, the CP lawyer may promote the imposition of tailored steps that specifically articulate the results a parent-client is expected to obtain from individual or family counseling, or from other services in which he or she is ordered to participate. When the expected results of services are clearly written into the specific steps themselves, each CP attorney is aware of the precise action the court expects the parent or DCF to take. On the other hand, the CP lawyer may argue for more ambiguous steps that are less likely to have an adverse effect upon the client, thereby providing greater leeway for both the parent and DCF during the pretrial period.[7] When appropriate, the CP lawyer may choose to submit a motion to modify the existing steps to reflect significantly changed circumstances or needs. See, e.g., *In re Alexander C.*, 67 Conn. App. 417, 425, 787 A.2d 608 (2001), affirmed per curiam, 262 Conn. 308, 813 A.2d 37 (2003) (reasonable for court to expect a party to affirmatively attempt modification of extant visitation protocols).

By proposing steps that clearly define the actions that DCF should and should not take during the pretrial period, the CP lawyer ensures that the department has fair notice of the assistance the court expects will be extended to the family at issue; this allows the department to allocate adequate resources to meet the family's needs.[8] See *In re Antony B.*, 54 Conn. App. 463, 479, 735 A.2d 893 (1999) (department is required to take parent's condition into consideration when determining what "reasonable efforts" to make at reunification). Anticipating future dispute over the issue of whether DCF's referral to services was adequate in quality or quantity, the CP lawyer may request that the steps obligate DCF to provide each party with written referrals to providers, with copies of each referral made available to the CP lawyers. While such a step imposes an additional burden on DCF, it creates a segregate record of the department's efforts which can be used to encourage a parent's compliance, or to establish whether or not the department has met its obligation to provide reasonable efforts at reunification.

The CP lawyer can also use the specific steps to foster a valuable dialogue with the client concerning the court's objectives for that party's conduct during the pretrial period, as the steps offer a framework for explaining just what

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conduct is permitted and what is proscribed during the pretrial period. In this manner, the CP lawyer can encourage the development of evidence that positively affects the client's case. For example, a client may require advice and counsel to fully understand the form specific steps' prohibition of a parent's "involvement" with law enforcement, if that provision has not been amended at counsel's request. See Form Specific Steps, JD JM 106.[9] If the steps require participation in services at a remote location, and the parent lacks transportation, the CP attorney may well speak to DCF and advise the department that providing transportation could be an important aspect of its reasonable efforts obligation, even if such transportation is not explicitly ordered by the steps.[10] If the client has questions about the effect or scope of the specific steps, under CPR Rule 1.1, the CP lawyer has the responsibility of helping the client to clearly *understand* the court's orders as drafted.

The CP lawyer can also make good use of the pretrial period by carefully analyzing the Rules of Practice and deciding whether it is useful to employ any of the legal tools that are now formally made available for use in CP matters.[11] For example, Practice Book § 34a-14 now permits "a parent, legal guardian or child" to file a written response to DCF's claims in a CP case. It may be tempting though to "talk back" to the department through the use of this provision. However, the CP lawyer should first assess whether the client will likely gain anything by filing a written response to the department's Summary of Adjudicatory Facts. Is such a tactic strategically sound, premature, or just too risky, given that DCF most often bears the burden of proof in CP cases and given the potential that judicial admissions may come back to haunt the client?

In other situations, the CP lawyer may be enticed by Practice Book § 34a-20, which now expressly authorizes the court to permit pretrial discovery in juvenile cases. Before engaging in pretrial discovery, however, the CP lawyer should be able to specify what can be accomplished through this process, and how receiving that information will assist the client in reaching the goal.[12] The CP lawyer should not use interrogatories or other discovery requests to duplicate the mandatory production provisions of Practice Book § 34a 20 (a) or for other dilatory purposes.[13] Moreover, the CP lawyer who pursues discovery should remain mindful of the Commentary to Practice Book § 34a 20, which reflects that the "goal of expediting child protection proceedings to disposition" is best met by eliminating "burdensome and/or repetitive discovery requests." [14] In accordance with these principles, discovery should be pursued if it will help the CP lawyer meet the client's goals; if discovery will not achieve this end, and the engagement in discovery is for purposes of form and not substance, such an endeavor will not help the CP lawyer succeed in the Child Protection matter. CP lawyer-energy would well be otherwise expended.

A final suggestion for making the pretrial period work is applicable to all CP lawyers, including but not limited to the CP attorney for a minor child (AMC). To comply with RPC Rule 1.1, the CP lawyer should meet with the client often enough to maintain an adequate professional relationship. The CP AMC must also meet with the client with sufficient frequency to enable the development of a valid understanding of the child's preferences. If the child is able to competently express his or her feelings, and is thus entitled to have a say in the matter, CPR Rules 1.2 and 1.4 require the CP AMC to advocate in support of the child's position.[15] The CP AMC who has been appointed pursuant to Connecticut General Statutes § 46b 129a (2), as amended , must also act as the guardian ad litem (GAL) for the child-client unless a conflict develops within the meaning of that legislation.[16] Section 46b 129a (2) sets the standard of practice for child's counsel-cum-GAL, stating: "The primary role of any counsel for the child including the counsel who also serves as guardian ad litem, shall be to advocate for the child in accordance with the Rules of Professional Conduct." The statute impliedly references CPR Rule 1.1, with which readers of this article are now intimately familiar. Clearly, Rule 1.1 does not contemplate that the CP AMC lawyer will sit back and let the other parties' counsel prepare and present the case at trial. To the contrary, CPR Rule 1.1 anticipates that the CP AMC will also comply with RPC Rule 1.3., which requires that any "lawyer shall act with reasonable diligence and promptness in representing a client."

And perhaps, in an effort to act with "reasonable diligence," the CP lawyer will adopt "Hot Tip" No. 3.

"HOT TIP" Number 3

When the CP lawyer has taken charge of the case from the beginning and has made the pretrial period work effectively, but the case has not been resolved in the CP client's favor, the time has come for investment in trial preparation.

Like any lawyer, the CP lawyer prepares for trial by spending valuable time concentrating on the carefully designated goal for the case, realistically determining whether that goal can be accomplished given the evidence available, and customizing an effective strategy for meeting that goal. Investing in trial preparation means tackling the arduous process of analyzing the opponent's legal claims; marshaling the evidence that should and should not come before the court; preparing to make and meet objections; and prosaically writing the "screenplay," if you will, for the CP lawyer's performance at trial. Assuming that, as it should be, that the CP lawyer is planning to *persuade* the trier of fact to reach a conclusion in the client's favor, he or she must set aside sufficient time during trial preparation for discerning which evidence is crucial to achieving the goal, and deciding which evidence will be

distracting, diluting, or just irritating to the court. The CP lawyer should devise a primary plan, and contingency plans, for meeting the client's burden of proof in the most persuasive and least vulnerable manner possible. If the client bears no burden, the CP lawyer should determine how to weaken the adversary's case through cross-examination, whether to use affirmative evidence, and/or whether to accomplish this task only through closing argument.

Here are some specific suggestions the CP lawyer can employ to make an effective investment in trial preparation:

• Each question the CP lawyer asks of a witness should have a valid, specific purpose. When preparing for direct or cross-examination, the CP lawyer should know in advance what will be proved through the witness's answer to any question that is asked. Simply put, each question asked at trial by the CP lawyer should help to prove an explicit point in the client's favor.[17]

• CP lawyers should not ask questions for the mere sake of asking questions, but should use the court's time efficiently and effectively. If nothing can be gained by cross-examination, the CP lawyer may well gain more ground for the client by sitting still, than by asking unnecessary questions which inadvertently open the door for harmful redirect-examination by the opponent.[18]

• When presenting an expert witness, expedite the process of impressing the court with the weight of the proffered evidence. Elicit a sufficient, relevant foundation, then ask whether the witness has an opinion based on reasonable professional probability or certainty, whichever the case may be, following the protocol set forth in C. Tait, supra, § 7.5.5, p. 520. When cross-examining an expert witness, the CP lawyer should avoid ad hominum attacks. The witness's faulty conclusions should be shown to be based upon defects in the expert's data bank, bias in favor of one outcome or another, or inconsistencies that undermine the ostensible value of the witness's testimony.[19]

• When objecting to a business record, for which an adequate foundation has been laid, the CP lawyer bears the burden of showing why the entire record or any part thereof is not reliable and therefore inadmissible hearsay.[20] The opponent also bears the burden of designating those parts of the business record which should be redacted and kept from the court's view.[21] See *State v. Palozie*, supra, 165 Conn. 294 . The CP lawyer should come to court prepared to offer redacted business records in lieu of the exhibit proposed by the adversary. The prepared CP lawyer need not use court time to create documentary exhibits when a conflict over offensive language (i.e., inadmissible hearsay in a business record) could easily have been predicted and addressed prior to trial by the astute, attentive CP lawyer.

• The CP lawyer should avoid raising argumentative objections or motions to strike testimony that has already been delivered. Present a terse, clear objection to evidence or motion to strike in a manner which is calculated to quickly gain the judge's attention and thereby obtain the desired relief. Support the objection or motion to strike by reference to case law, codification or treatise, when called upon to do so by the court. No speeches are necessary, as the CP lawyer's pithy objection or motion to strike should satisfy any rules requiring a record for civil appeal.[22]

• In closing argument, the CP lawyer should recall, relate and put to good use all of the valuable evidence gained through direct or cross examination at trial. When a pivotal question was asked and the witness responded with a crucial answer, remind the judge about it in closing argument. Suggest the manner in which the court should find that evidence to be persuasive and supportive of the client's position. At the same time, use closing argument to anticipate and defuse the adversary's proposal for using evidence to support the opposing position at trial. For instance, if the CP lawyer has inquired about an area that was better left unexplored at trial, and the result was an answer that helped bolster the opponent's case, ascertain how much damage has been done and deal with it by marshaling the other, hopefully weightier, evidence. By relying on references to specific aspects of the evidence, highlighting testimony from certain witnesses, or demonstrating how to assess particular documents that have been introduced, the CP lawyer can effectively use closing argument to persuade the court that the client's "goal" has been achieved.

This final suggestion for making effective use of the CP lawyer's time-consuming investment in trial preparation could well have been presented as a part of "Hot Tip No. 1" or "Hot Tip No. 2." Some trial practice authorities actually suggest writing out the closing argument very early on in the process of representing the client and preparing the case, thereby encouraging the trial lawyer to remain focused on the important facts without being distracted by corollary, unpersuasive evidentiary threads. The CP lawyer who has taken charge of the case from the beginning, and has made good use of the pretrial period, has intrinsically identified the client's goal early on, even while allowing ample opportunity for the case to be changed and modified as the months pass. Whether or not a trial actually occurs, this process should allow any attorney lawyer to achieve the ultimate goal of successfully representing a client in a Child Protection Case.

Honorable Nicola E. Rubinow
Child Protection Session,
Superior Court, Middletown, CT

(Footnotes for Judge Rubinow's article begin on page 6)

Footnotes

[1] See *Troxel v. Granville*, 530 U.S. 57, 65-66, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000); see also *In re Devon B.*, 264 Conn. 572, 584, ___ A.2d ___(2003). The Connecticut Supreme Court specifically adopted the lessons of *Troxel v. Granville*, in *Roth v. Weston*, 259 Conn. 202, 789 A.2d 431 (2002) (defining circumstances under which parents may prevent third-party visitation with their children). Connecticut has also observed the multi-dimensional aspects of this family-oriented liberty interest, recognizing that a child has a constitutional right to be raised by its biological parent: *"A child, no less than a parent, has a powerful interest in the preservation of the parent-child relationship."* (Citations and quotation marks omitted; emphasis added.) *In re Baby Girl B.*, supra, 224 Conn. 281, citing *Santosky v. Kramer*, 455 U.S, 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); see also *In re Jessica M.*, 217 Conn. 459, 464-65, 586 A.2d. 597 (1991). In CP litigation, it is fundamental, however, that "this right to family integrity is not absolute. Our courts have long recognized that the state's intervention in family matters is justified when it is found to be in the best interest of the child." *In re Tayquon H.*, 76 Conn. App. 693, 699-700, 821 A.2d 796 (2003).

[2] This legislatively created hiatus is usually brief when a contested OTC hearing is scheduled. For TPR cases, however, the Practice Book and relevant case law specifically anticipate the accumulation of evidence related to the conduct of both parent and DCF following submission of a neglect or uncared for adjudication. See Practice Book §35a-7(a) and Commentary ("Post-adjudicatory evidence may be considered in the adjudicatory phase in a termination of parental rights case alleging the grounds of no ongoing parent-child relationship or failure to rehabilitate. *In re Amber B.*,56 Conn. App. 776, 746 A.2d 222 (2000); *In re Stanley D.*, 61 Conn. App. 224, 763 A.2d 83 (2000); *In re Latifa K.*, 67 Conn. App. 742, 789 A.2d 1024, (2002").

[3] Now, you protest, the CP attorney is not always assigned to the case from the start; often, counsel is appointed when the case is already months or even years old. But that *still* gives the CP attorney the opportunity to take charge of the case, and thus to foster its development into a matter that will go to trial, or one that can be settled in a manner favorable to the client.

[4] As to the use of a party's anger for impeachment purposes, to show bias or to affect credibility, see the general discussions at C. Tait, Connecticut Evidence (3d Ed. 2001), §§6.27, 6.30 See also *State v. Bruno*, 1 Conn. App. 384, 392, 473 A.2d 311 (1984); *State v. Zdanis*, 173 Conn. 189, 195, 377 A.2d 275 (1977). As to examination of the hostile witness, see the discussion at C. Tait, supra,§6.20.4, p. 427. As to the angry excited or spontaneous utterance hearsay exception, see *State v. Arluk*, 75 Conn. App. 181, 187, 815 A.2d 694 (2003), citing *State v. Kelly*, 256 Conn. 23, 41 42, 770 A.2d 908 (2001); Conn. Code Evid. §83(2); C. Tait, supra, § 8.17.3, p. 619.

[5] See RPC Rule 1.2., entitled Scope of Representation, which provides that subject to designated limitations, " (a) A lawyer shall abide by a client's decisions concerning the objectives of representation, . . . and shall consult with the client as to the means by which they are to be pursued." See also RPC Rule 1.14, entitled Client under a Disability. RPC Rule 1.14 (a) applies when a client's decision-making capacity is impaired by "minority, mental disability or for some other reason." Under such circumstances, the rule obligates a lawyer to "as far as reasonably possible, maintain a normal client-lawyer relationship with the client." RPC Rule1.14(a). However, "[w]hen the lawyer reasonably believes that the client cannot adequately act in the client's own interest," RPC Rule 1.14(b) prompts the lawyer to "seek the appointment of a guardian or take other protective action with respect to a client."

[6] The specific steps provide the parent with "fair warning" that DCF may eventually seek to terminate parental rights (TPR). *In re Devon B.*,supra, 264 Conn. 584. Compliance with the steps does not indicate that a parent has achieved rehabilitation, nor does compliance preclude DCF's pursuit of a TPR action. *In re Victoria B.*, 79 Conn. App. 245, ___ A.2d ___ (2003), citing *Inre Jennifer W.*, 75 Conn. App. 485, 498-99, 816 A.2d 697, cert. denied, 263 Conn. 917, 821 A.2d 770 (2003). However, "the failure to comply with specific steps ordered by the court typically weighs heavily in a termination proceeding." *In re Devon B.*,supra, 264 Conn. 584.

[7] Expected results of appropriate services cannot be identified early in the proceedings, so that generic specific steps must remain in effect until the client's particular needs or obligations become known. For instance, it may be impracticable to have highly "specific" steps issued in connection with an ex parte Order of Temporary Custody or even at the preliminary hearing that follows. See Connecticut General Statutes §§46b129(b), (d)(6). In other cases, a psychological evaluation or other assessment should logically precede precise designation of the services which will be incorporated into the specific steps.

[8] CP counsel should remain aware that after a neglect or uncared for adjudication, General Statutes §Sec. 46b129(j) calls for specific steps to be imposed upon the parent alone, without reference to DCF; a similar provision is effective following the permanency planning hearing, pursuant to General Statutes §Sec. 46b129 (k) (2). However, many judges willingly impose steps upon DCF at any stage of the proceedings, as contemplated by the Judicial Branch's Form Specific Steps, JD-JM-106. During the CP pretrial period, all CP lawyers should monitor the degree to which reasonable efforts at reunification are being been made, or not made, as a pending OTC or neglect petition may evolve into a TPR action. Both parties should pay careful attention to the implications of §17a 112 (j) (1) in the light of the reasonable efforts analysis utilized by *In re Vincent B.*, 73 Conn. App. 637, 809 A.2d 1119 (2002); cert denied, 262 Conn. 934, 815 A.2d 136 (2003). Can the language of §17a 112(j) (1) be interpreted to mean that DCF is obligated to make specific services available to a respondent parent even if duplicate services are being delivered by the Department of Corrections, Probation, a diversionary program from the criminal court, or even if the parent is pursuing rehabilitation services on his or her own? See *In re Roshawn R.*, 51 Conn. App. 44, 56-67, 720 A.2d 1112 (1998). Should the obligation to duplicate services be incorporated into a specific step for DCF? Or would referring a parent to duplicate services impose an undue burden on the client? Counsel should consider and resolve these issues during the pretrial preparation period.

[9] For instance, the CP lawyer may work to ensure that the client understands that mere possession of drugs, being a violation of the law in Connecticut, could constitute a violation of the specific steps and thereby place reunification in jeopardy. To avoid the need for interpretation, a CP lawyer may request amendment of the form steps to include clear and specific prohibition of criminal behavior. The steps may instead admonish a parent: "Do not violate the laws of this state, any other state, or the United States." See *In re Helen B.*, 50 Conn. App. 818, 828-830, 719 A.2d 907 (1998). While such a step creates a bright-line test for the parent who needs guidance in understanding what the court expects by way of compliance, counsel may decide that such rigidity is overly burdensome for a particular client. Under those circumstances, counsel may oppose such modification of the JD JM-106 steps.

[10] For instance, If DCF chooses to provide a bus pass for a parent who lacks transportation, and local bus service is unavailable or unduly cumbersome, the CP lawyer may refer to the specific steps when cautioning the department-client that such an effort will not likely pass muster under § 17a 112(j) (1). See also General Statutes §17a 112(k) (7), requiring the court to ascertain, in a TPR matter, "the extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the economic circumstances of the parent."

[11] Practice Book §34a-1, effective January 1, 2003, expressly adopted and/or adapted certain provisions of the civil rules for use in juvenile matters, including child protection cases.

[12] Guided by the provisions of Practice Book §13-2, the CP lawyer who pursues discovery should be ready and able to state exactly how the inquiry "would be of assistance in the prosecution or defense of the action." See Practice Book §34a-20(d), rendering Practice Book §13-2 applicable when the court "permits discovery" in a CP matter.

[13] Practice Book §34a20 (a) provides: "Access to the records of the Department of Children and Families *shall be permitted* in accordance with General Statutes §17a-28 and other applicable provisions of the law." (Emphasis added.) A competent CP attorney might do well to make a series of appointments and visit DCF to review the department's file in situ, rather than relying upon the transmittal of copies from the adversary. See Practice Book §34a 20(b) (court may permit pretrial inspection).

[14] This aspect of the Commentary to the Practice Book is consistent with the CP lawyer's ethical obligation to engage only in the "meritorious" pursuit of discovery. RPC Rule 3.1, entitled Meritorious Claims and Contentions, prohibits a CP lawyer from promoting a legal or factual issue "unless there is a basis for doing so that is not frivolous." The Commentary to RPC Rule 3.1 admonishes that "The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, *but also a duty not to abuse legal procedure*." (Emphasis added.) RPC Rule 3.4, entitled Fairness to Opposing Party and Counsel, states in relevant part: "(4) A lawyer shall not "in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party."

[15] See footnote 7.

[16] The Appellate Court addressed some issues affecting the CP GAL in *In re Tayquon H.*,76 Conn. App. 693, 821 A.2d 796 (2003); a discussion of that opinion is well beyond the scope of the present article. Those interested in a practical guide to the function of the child's attorney vis a vis the child's GAL can find valuable references in *Schult v. Schult*, 241 Conn. 767, 699 A.2d 134 (1997) and its offspring, *Newman v. Newman*, 235 Conn. 82, 95, 663 A.2d 980 (1995). Although both *Schult* and *Newman* address custody disputes related to actions for dissolution of marriage, such a family matter is akin to a juvenile proceeding pursuant to the application of General Statutes §§46b1(11) and 46b-121. Thus, these cases offer valid guidance for attorneys and GAL's involved in CP litigation.

[17] The CP lawyer should consider "Why would I ask *this* question if it doesn't help my client?" There may perhaps be times when it is appropriate to ask a seemingly unrelated or otherwise improper question for strategic purposes. See footnote 20. But no jury is present in a CP trial, and the CP lawyer may also frustrate the judge or confuse the issues if too many inquiries are made about irrelevant, unimportant matters; if inappropriate inquires are regularly made; or if questions are asked for no other apparent purpose except advocacy on behalf of another lawyer's client.

[18] For instance, the CP lawyer may decide not to ask questions that start with "Would it surprise you that . . ." unless "surprise" is somehow an issue in the case, or it is important to prove that the witness has been misled or deceived. See C. Tait, supra,§ 6.20.5, p. 427. If the CP lawyer wants to prove that the witness made a premature opinion or was careless in evaluating the facts, ask whether the decision was made without knowing "x" or "y", so long as those matters are in evidence or will later be tied in to the case. See Conn. Code Evid. §13(b). If you are prepared for the response, you might ask whether knowing "x" or "y" would affect the witness's opinion one way or another. Then you have proved the witness's failure to throughly analyze the data at issue and proved that the witness is unreliable, without "crossing the line." For a contrary and controversial discussion that promotes asking unsavory questions during jury trials, see G. Dobbs & G. Spreckart, "Streetwise Litigation: 'Legitimate' Tactics for Operating Outside the Rules," 29 (4) Litigation 34-39 (2003).

[19] As a general rule, and specifically with regard to experts, CP lawyers would do well to avoid dwelling on minutiae unless there is a valid, meaningful reason for doing so. If the purpose of the inquiry is to impeach the witness, you should consider whether the judge will likely discredit a witness who wrote a lengthy narrative or report even if you can prove that the witness made scrivener's type errors? On the other hand, if the witness has confused the facts in a way that shows bias or prejudice toward your client, then by all means the CP lawyer should bring the error to the court's attention through effective cross-examination.

[20] In a civil case, such as a CP matter, "§ 52-180 [the business entry statute]'should be liberally interpreted' in favor of admissibility... The witness introducing the document need not have made the entry himself or herself, nor have been employed by the organization during the relevant time period. In addition, '[t]here is no requirement in § 52-180 . . . that the documents must be prepared by the organization itself to be admissible as that organization's business records.'" *New England Savings Bank v. Bedford Realty Corp.*, 246 Conn. 594, 603 (1998).

[21] A general objection to an otherwise admissible business record is not sufficient, as it is "incumbent on the [opponent] to point out the inadmissible parts with specificity and to give reasons why the specified parts were not admissible. It [is] not the court's duty to separate the inadmissible parts of the report from the inadmissible parts." See *State v. Palozie*,165 Conn. 288, 294-95 (1973); see also *Aspiazu v. Orgera*, 205 Conn. 623, 628, 535 A.2d 338 (1987) (signed MD's report still subject to double hearsay scrutiny, although generally admissible under§52-174b, a cousin of §52-180). As a CP case is a "family relations matter" as defined in General Statutes §46b1, §52-174b establishes the admissibility of signed records from a treating physician, psychologist or other enumerated health care provider, subject to such scrutiny as is described in *Aspiazu v. Orgera*, supra, 205 Conn. 628.

[22] Practice Book § 55 sets the parameters for appropriate objections to evidence, providing: "Whenever an objection to the admission of evidence is made, counsel shall state the grounds upon which it is claimed or upon which objection is made, succinctly and in such form as he or she desires it to go upon the record, before any discussion or argument is had. Argument upon such objection or upon any interlocutory question arising during the trial of a case *shall not be made by either party* unless the judicial authority requests it and, if made, just be brief and to the point." (Emphasis added.) Section 5-5 also abolished the previous rule requiring that counsel take an "exception" to the court's evidentiary ruling in order to preserve the issue for appeal.

What Counsel Should Look For in Foster Home Visits

Foster Home Visits: An Opportunity to Know the Child

In the United States, there are 550,000 children and youth in foster care.[1] As of 8/31/03, there were 3,427 children in foster care in Connecticut.[2] For attorneys who represent children, visiting the children in foster homes is often an opportunity to get to know the child in a relaxed environment.

When planning a visit, it is of course critical to know beforehand the goal of the visit and have an agenda, albeit a flexible one, for the meeting. Okay, so the time of the visit has been confirmed. You've arrived and have engaged the child in conversation or activity that helps to build the trust in your relationship. You've secured the information you intended to gather. Are there other issues that you should consider?

While foster care is supposed to provide a safe environment for children, foster families should also provide nurturing, enhance character development, teach life skills and support the child emotionally while ensuring that all basic physical needs, including nourishment and medical care are met. Alshuler & Gleeson (1999) identified domains in which child well-being could be measured. They include resilience, coping, physical health, mental health, cognitive functioning, developmental delays, behavioral disturbances, emotional and psychosocial adjustment, and school performance.[3] These domains are those that we should be considering when visiting a foster home. While the attorney is not expected to be a clinician, there is much helpful information that can be gleaned from considering the child's functioning in the above domains.

In your assessment of the child's functioning, the answers to the following questions can assist in assuring that the child's best interests are served:

- How does the child get along with the other children in the home? Do they play with one another?
- Does the child have playmates in the community? Is the relationship consistent or sporadic?
- How does the child relate to the caregivers? Is there tension? Are issues resolved respectfully?
- Has the child developed an attachment to the primary caregiver? Does the child relate to the family as though (s)he were a boarder or as a member of the family?
- What type of discipline works best with the child?
- Are there any safety issues?
- Does the family engage in activities in the community?
- Is the child engaged in activities with extended family?
- How is down time spent? Is the child allowed to watch television and play video games? If so, is the child also encouraged to participate in family activities, i.e. playing board games, reading to each other?
- Does the child have hobbies? Does the foster family support the child's engaging in these activities?
- Is the caregiver involved in the child's school activities? Is (s)he aware of how the child is performing in school?
- Does the child have age appropriate chores?
- Does the child get an allowance or some other spending money?
- Are adolescents given appropriate opportunities to become independent?
- Can the caregiver articulate what (s)he likes about the child?
- Does the child express that (s)he likes the caregiver and other members of the foster family?

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[1] www.casey.org/fostercareinfo

[2] Department of Children and Families, data as of 10/1/03

[3] Altshuler, S. J. and Gleeson, J. P. (1999), "Completing the Evaluation Triangle for the Next Century: Measuring Child "Well-Being" in Family Foster Care." *Child Welfare. 78* (2) downloaded from www.cwla.org/programs/fostercare/jf99intr.htm

Checklist for Foster Home Visits

Pointers

-When possible, meet with the child outside the immediate presence of everyone else for at least a few minutes.
-When possible, meet with the foster parent alone for a while.
-Explain the role of the child's attorney to both the foster parent and the child.
-Spend some time just playing with the child and chatting about school, etc. Don't overwhelm the child.
-Speak to the child in an age-appropriate way. Consult materials on interviewing children before the visit.
-Give a business card to the child. Give one to the foster parent.

Questions to Keep in Mind

Living Conditions

-Is the home neat, clean and safe?
-Is there a separate bed for the child? With whom does the child share a room?
-How many bedrooms are there? How many people are in the home?
-Are there age-appropriate toys for the child?
-Is the child dressed in clean, appropriate clothes? Is the child's hygiene good?
-Do the children in the home appear well-cared for?

Foster Parent

-Does the foster parent speak the child's primary language fluently?
-How experienced is the foster parent? How many years has she been licensed?
-Does the foster parent work? How many hours?
-With whom does the foster parent leave the child when she has to work or leave the home for other reasons?
-Does the foster parent think everything is working out well with the child?
-How does the foster parent interact with the child? With others in the home?
-How many children and adults live in the home?
-What are the children's ages?
-How are the children related to the foster parent (e.g., biological child, foster child, grandchild)?
-Do any of the other children in the home have significant special needs?
-Are there any people who don't live in the home but spend a lot of time there (e.g. foster parent's boyfriend)?
-Does the child get along well with others in the home?
-How many foster children is the foster parent certified to have in the home?
-Does anyone in the home appear to have significant problems or limitations, including substance abuse?

Natural Parents/Siblings

-Has the foster parent met the natural parents?
-What is the visitation schedule?
-Have DCF and the parents adhered to the visitation schedule?
-How does the child act after visits with the parents?
-Does the child have siblings?
-What type of sibling visitation is there?
-How does the child respond to sibling visits?

Child, Generally

-Does the foster parent think the child is doing well?
-Does the foster parent notice any special needs or problems (e.g., developmental delays, nightmares, inability to sit still, depression)?
-Do you notice any special needs or problems?
-Does the child appear to have adjusted to the foster home?
-Does the child understand who you are?
-Does the child appear to feel comfortable around the foster parent and the others in the home?
-Does the child have any requests?
-Does the child have any questions about anything?

Medical Issues

-Are there any upcoming appointments? With whom?
-Have there been any recent appointments? With whom?
-Does the foster parent have the child's medical passport?
-Are there any pressing medical issues?

Education

-Is the child in preschool or school? Where? What grade? Bilingual program?
-Is the child receiving special education?
-If not, does the foster parent think that the child should be tested for special education?
-If so, does the foster parent know when the last planning and placement team meeting was? Did the foster parent attend? Is there an upcoming PPT meeting?
-Does the child like school?

Resources for Foster Family

-Has the foster parent been receiving foster care payments?
-Has the foster parent been receiving childcare subsidies from Care4Kids, the childcare assistance program?
-Does the foster parent need vouchers for particular items, especially big purchases such as baby furniture?
-Is the foster parent receiving respite care (i.e. time off)? If not, does she need respite care?
-Is the foster parent satisfied with the assistance she is receiving from DCF?
-Does the foster parent understand that she should contact you if she believes that DCF is not meeting the child's needs?

Federal Court Monitor to Now Oversee Management of DCF

DCF's Compliance Violations Result in Federal Court Oversight of the Agency

In 1989, suit was filed against the Department of Children and Families on behalf of thousands of children in the care and custody of DCF. This lawsuit, Juan F., was settled in 1991 by Consent Decree; in 1992, the Consent Decree was supplemented by detailed Manuals outlining changes in the way DCF cared for the children in its custody.

In 1989, when the suit was filed, there were 3400 children in DCF out-of-home care. Today, there are 6451 children in out-of-home care.

Eighteen months ago, DCF and Governor Rowland asked that the parties who brought the suit relinquish the requirement that DCF meet the detailed plans specified in the Consent Decree and Manuals; they asked, instead, that the Department be allowed to comply with 28 outcome measures, specifically formulated to allow DCF to succeed in the areas that most needed reform. Last summer, one year after the agreement to allow DCF the opportunity to comply with those measures, the appointed Court Monitor, Dr. Ray Sirry, found numerous violations in DCF's attempted compliance: children continued to be bounced from one placement to another and, in some situations, he found the children in DCF custody were getting worse instead of improving. Dr. Sirry determined that DCF had been successful in meeting only six of the 28 compliance measures they had agreed to. Unmet measures included compliance with specific visitation standards for social workers; medical and mental health needs unmet after 60 days; lack of timely multidisciplinary screens; overcrowded foster homes and failure to recruit enough new foster homes; overstays in shelters (more than 45 days).

This past September, a Motion for Contempt was filed by the plaintiffs, asking that the Court place DCF in federal receivership. This began a thirty-day negotiation period, which concluded with a court-approved agreement, released October 7, 2003, for the management and oversight of the Department. In the agreement, the state admitted that it has failed to comply with court-ordered improvement standards to achieve better outcomes for children and families in Connecticut.

Detailed Exit Plan to be Developed by Dr. Ray Sirry, Court Monitor

As of October 8, 2003, management authority for the Department of Children and Families rests with Dr. Ray Sirry, Federal Court Monitor; Darlene Dunbar, Commissioner of DCF; and Mark Ryan, Director of the Office of Policy and Management. If any disagreement arises between Dr. Sirry and Commissioner Dunbar, Dr. Sirry has direct access to Governor Rowland's office, whose decision regarding resolution must be made within five days. If Dr. Sirry does not agree with the Governor's determination, Dr. Sirry will refer the conflict to U.S. District Court Judge Alan Nevas, who will make the final ruling. Most significantly, the state has agreed not to appeal any ruling by Judge Nevas in this case.

A detailed exit plan, containing strategies and outcome measures, will be developed in the next sixty days by the Court Monitor, Dr. Sirry, and approved by the Federal Court. Immediately, as of October 8, flexible funding of $1,000,000 was made available for the emergency needs of children in the Department's care.

The Center for Children's Advocacy, along with Children's Rights, Inc., represents the plaintiff class of children. It is the Center's hope that any barriers to the Department's success will be overcome by this detailed management plan, protecting the interests of the plaintiff class. This is a radical change for DCF. There is only one other receivership noted in the history of departments of child protection throughout the country. The unique nature of Connecticut's plan, agreed to by the Department's leadership, Governor Rowland, the Federal Court and Court Monitor, and the plaintiffs, allows the development of a system designed to be insulated from political interference.

"After twelve years and 15 court orders, we had no other recourse but to file a drastic motion seeking receivership,"said Martha Stone, Executive Director of the Center for Children's Advocacy. "Now that the state has humbly admitted non-compliance and acknowledged its limitations, we have confidence in the Court Monitor to assume his management responsibility and make needed reforms."

Goal is to Protect the Rights of all Children

The goal of all parties involved in this plan is to help DCF evolve so the rights of all children are protected. There are too many children shuffled from one foster home to another; there are too many children waiting too long for the services they need. While federal management of state government is not an ideal situation, the Department of Children and Families will benefit from stability in leadership, philosophy and direction. Tight quality assurance will guide the decisions of the next few months, serving the best interests of the children who need the Department's help.

Whether we're printing newsletters or brochures, we're always in need of printing services. If you are able to donate printing services, please call us at 860-570-5327. Thank you!

Truancy: 5 Legal Tips for Representing your Child Client

Five Legal Tips for Representing your Child Client Facing Multiple Suspensions or Truancy Petitions

Have you verified in writing how much school your client has missed this year?

Students' attendance records are often incorrect. Students are sometimes marked absent when they are in fact tardy, unexcused absences may be able to be excused, etc.

Has the school held the statutorily required meeting with your client's parent/guardian to discuss your client's absences?

If your client has had more than 4 unexcused absences in a month or 10 in a year, the school is required to have a meeting with the parent/guardian, or other person having control of such child, *within 10 days* to review and evaluate the reasons for the absences. Conn. Gen. Stat. § 10-198a. Attend this meeting – you could help direct the meeting in a way that may be helpful to your client (you may also help to convince the school not to file a Family with Service Needs or a Youth in Crisis petition). If the school has filed a Family with Service Needs or a Youth in Crisis petition without attempting to hold this meeting, you may be able to get the case dismissed, arguing noncompliance with the statute.

If your client is in need of special education services, has anyone made the legally required referral?

Pursuant to 34 C.F.R. § 300.125, there is an affirmative duty placed on school districts to identify, locate, and evaluate all children in need of special education services from birth on. This duty is called "child find."

Pursuant to Regulations of Connecticut State Agencies § 10-76d-7, boards of education are required to accept referrals from school personnel, the child's parent, a physician, clinic, or social worker to determine eligibility for special education and related services. Furthermore, prompt referral shall occur for "children who have been suspended repeatedly or whose behavior, attendance or progress in school is considered unsatisfactory or at a marginal level of acceptance."

If your client is already identified as a special education student, did the school conduct a functional behavior assessment (FBA) and/or develop a behavior intervention plan (BIP) to address his/her truancy?

Pursuant to 34 CFR §300.346, where a child's behavior impedes his/her learning, the school is required to consider strategies, including positive behavioral interventions and supports, to address that behavior. This is usually done through an FBA, which is an assessment that is used to develop the BIP. This Plan should focus on how to help the student overcome his/her truancy problem.

Is your client aware of the legal ramifications of not attending school?

Pursuant to Conn. Gen. Stat. § 10-198a(c), the school is required to file a Family with Service Needs complaint with the Superior Court if the parent/guardian, or other person having control of a truant child, does not cooperate with the school to solve the truancy problem. Also, the school has the option of filing a Youth in Crisis petition if a sixteen or seventeen year old has four unexcused absences from school in any one month or ten unexcused absences in any school year. Conn. Gen. Stat. § 46b-120.

For a copy of our book for attorneys entitled, "Legal Representation of Status Offenders: Families with Service Needs and Youth in Crisis," or for a copy of our new brochure for teens entitled, "Truancy: What Does the Law Say?," please call the Center for Children's Advocacy at (860)570-5327 or use the order form on page 15 of this newsletter. Order form may also be downloaded from our website, *www.kidscounsel.org*.

Stacey Violante Cote, Esq.
Director, Teen Legal Advocacy Clinic
Center for Children's Advocacy

Recent Developments in Child Law: Important Case Summaries

Abuse and Neglect

In re Steven M.

264 Conn. 747 (2003)
Officially Released: July 22, 2003

In this important case, the state Supreme Court tackled the issue of what constitutes a statutorily permissible transfer procedure from a juvenile facility to an adult Department of Correction facility. The case involved Steven M., a boy committed to the state Department of Children and Families ("Department") as an eight year old in 1991. Diagnosed with dysthemia, mild mental retardation and borderline personality disorder, the state charged Steven with disorderly conduct resulting from overly aggressively behavior in 1999. In January 2000, Steven pleaded guilty to two counts of disorderly conduct, and was committed to Long Lane, where in March 2003, he once again was charged with disorderly conduct. On March 22, 2000, the Department filed a motion to transfer Steven to an adult facility, and a hearing was scheduled to determine the appropriateness of transfer.

At the transfer hearing, the court declined to take evidence, but heard arguments from the parties, including a guardian ad litem appointed to represent Steven's best interests. The court granted the transfer motion, the appellate court reversed the order, and this appeal followed.

In a unanimous decision, the court found that the case met the notorious three-part exception to the mootness doctrine, concluding that the case was "capable of repetition, yet evading review." Most importantly, however, the analysis focused on the requirements governing transfer proscribed by Conn. Gen. Stat. § 17a-12a. The court concluded that the statute mandated that the "best interest of the child" be considered as a factor, but not the dispositive factor in determining whether transfer is appropriate. When a juvenile presents a danger to self or others, or cannot safely be maintained by the Department, a hearing is required in Superior Court to determine whether transfer is appropriate, taking into consideration the best interest of the child.

Here, while the court did not hold a competency hearing before transferring, the failure to do so constituted "harmless error." The court concluded that the trial court had solicited enough discussion and argument on the matter, and enough evidence surfaced through presentations by the guardian ad litem to justify Steven's transfer. Thus, Steven's interests were adequately represented, and the transfer was deemed appropriate.

In re Victoria B.

79 Conn. App. 245; 829 A.2d 855 (2003)
September 2, 2003

This fact-based ruling arises as the result of termination of parental rights with respect to a minor child, Victoria B. The appellate court tackled the difficult issue of whether the respondent mother had made sufficient strides in addressing her serious problems to justify overturning the trial court's termination order – made to reflect the "best interest of the child."

The respondent mother has experienced a tragic and dysfunctional history, including a fluctuating mental health condition. She had been previously diagnosed with bipolar disease, post-traumatic stress disorder, and borderline personality disorder, for which there is no cure. According to the record, the mother failed to complete many rehabilitative programs that DCF and other agencies had arranged for her. At the time of the trial, the mother was under the care of physicians and showed signs of improvement but did not exhibit the capability for parental responsibility. Holding the best interest of the child as the compelling issue, the trial court entered a judgment terminating her parental rights.

On appeal, the mother challenged the adjudication that she had not attained a sufficient degree of rehabilitation to warrant belief that she would be capable of assuming a responsible position with respect to her child. The trial court recognized that the mother had made strides in addressing her problems, but not enough under the "clear and convincing evidence" standard to justify overturning the neglect adjudication. The court then found that the seven statutory factors weighed in favor of the termination of parental rights and that the best in interest of the child in this case indicated that the child had a positive and significant improvement in condition since placement in the foster home. The court also granted deference to the trial court's reliance on the testimony of mental health experts regarding the depth and seriousness of the mother's mental health problems and the uncertainty as to when the mother would be capable of parenting the child. The child in question was five years of age and the court determined that, based on expert testimony, the mother's prospective rehabilitation was not "within a reasonable time given the age and needs of the child." The court's reasoning centered on the crucial issue of a parents' ability to manage not only their lives, but also their ability to care for the particular needs of their children. The court reasoned that the mother's health was volatile and it was uncertain as to how long it would take before she might be in a position to assume parental roles. Finally, the court relied on the bond between the child and the foster family and on the child's desire to stay with the foster family, who had expressed their intentions on adoption.

Recent Developments in Child Law: Important Case Summaries

Civil Rights

Prigge v. Ragaglia, et al

265 Conn. 338 (2003)
Officially Released: August 12, 2003

In this relatively straight-forward case, the Supreme Court limited a claimant's attempt to recover damages from state employees on the basis of the long-recognized doctrine of sovereign immunity. The underlying case, Joshua S., reflected the brutal events of June 10, 1999, where Joshua's mother, stabbed his father to death in the bedroom of their home. After stabbing Joshua's sister Jessica and herself, the mother set the house on fire. Emergency personnel rescued Joshua – who was immediately treated in Connecticut and Massachusetts. The Prigge's lived next door to Joshua, and they had developed a friendship with Joshua's family to the extent that the family named the Prigge's testamentary guardians of their two children.

Immediately after the fire, the state Department of Children and Families ("Department") intervened and obtained an ex parte order for temporary custody, denying the Prigge's custody pursuant to the family's will. See In re Joshua S., 260 Conn. 182 (2002). The Prigge's subsequently brought an action seeking injunctive and declaratory relief and money damages against the Department commissioner and other pertinent Department officials on the grounds, inter alia, that they violated their civil rights and religious freedom. The trial court denied a motion to dismiss, and the Supreme Court granted review after the appellate court denied the plaintiffs' motion to dismiss.

In a relatively straightforward decision, the court found that the doctrine of sovereign immunity barred recovery of money damages when plaintiffs fail to avail themselves of the procedures dictated in Conn. Gen. Stat. §§ 4-14 through 4-165. Citing Miller v. Egan, 265 Conn. 301 (2003) (a case released the same day overruling Shay v. Rossi, 253 Conn. 134 (2000)), claims for money damages against state officials acting in their official capacity must proceed through the claims commissioner, and only then may plaintiffs avail themselves of civil actions. Claims for injunctive and declaratory relief, however, did not require vetting through the claims process. As a result, sovereign immunity barred the Prigge's from bringing the case in Superior Court and dismissal for lack of subject matter jurisdiction followed.

Devastating Cuts in HUSKY Insurance Program

Recent Legislative Action Results in Reduction of Substinence Benefits to Children at Risk

Child advocates should be aware that the recent legislative flurry (both in the spring and summer) resulted in some devastating cuts in the state's HUSKY A (Medicaid for children with household income not exceeding 185% of the federal poverty level) insurance program. While children are certainly not the only victims of these draconian cuts, they are at the forefront of a movement to reduce the comprehensive safety net that has been built up over time to ensure subsistence benefits to children at risk.

Included in these cuts is the termination of intake for HUSKY applications for LEGAL IMMIGRANT children and families as of July 1, 2003. Thus, legal immigrant families attain eligibility only after residing in the United State for five years, subject to certain exceptions (such as those immigrants who are classified as asylees and refugees, etc). Also victim to the budget axe was Presumptive Eligibility, where same day HUSKY registration allowed children to receive immediate, temporary coverage pending further determination. Now, children seeking medical attention will be subject to the regular application requirements - that of a 45 day eligibility determination period.

DSS is also seeking major changes in the HUSKY programs that require federal approval (through the waiver process), such as the institution of co-pays and premiums for HUSKY A adults, children and pregnant women, as well as prescription co-pays. Included may be a request to allow pharmacies to deny prescriptions to individuals who "demonstrate a documented and continuous failure" to make co-payments. This roughly translates into failing to make co-payments for six months or failing to make co-pays on six or more prescriptions within a six-month period.

As icing on the cake, the state is seeking to eliminate the guarantees provided in the federally mandated Early Periodic Screening Diagnosis and Treatment (EPSDT) guidelines - the benchmark "program" that allows children to receive the benefits of mandatory screenings and to receive medically necessary care and treatment discovered through the screening process.

Advocates should be aware that DSS is moving quickly to secure a waiver, and the process includes the submission of the waiver request to the Connecticut Law Journal, with time for public comments, and potential review by the Appropriations and Human Services Committees. The Committees may advise DSS, but cannot veto the waiver.

Note that children in DCF custody will also be subject to these limitations, specifically the elimination of EPSDT. Further information on the budget cuts and the effect on all HUSKY benefits may be found at the Children's Health Council website by going to: http://www.childrenshealthcouncil.org/news/budget/index.htm

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Center for Children's Advocacy

TeamChild: Favorable Evaluation Nears Completion

Yale Consultation Center Completes Favorable TeamChild Evaluation

A year ago, the Center for Children's Advocacy contracted with The Consultation Center at Yale University for a quantitative and qualitative evaluation of the TeamChild Program. The goal of the evaluation is to understand the impact that TeamChild has on outcomes of individual cases and on systemic change. The role of TeamChild is to team a TeamChild attorney with a Juvenile Public Defender to obtain the best outcome for the child. The Public Defender represents the youth in the juvenile court and the TeamChild attorney provides legal advocacy to obtain educational, mental health and other social services to minimize the youth's involvement with the juvenile court. Data was collected on individual cases to examine school success, referrals for services and services received. Information on recidivism was also collected. Individual case data was recorded at the time the case was accepted and at three and six month intervals. Systemic information was obtained through focus groups comprised of education and juvenile justice representatives, which gathered their opinions about TeamChild's impact on the policies and practices of the Hartford schools and the Superior Court for Juvenile Matters in Hartford. The evaluation was funded by The Tow Foundation, a private foundation with a special interest in programs that serve youth involved in the juvenile justice system in Connecticut.

The final report, including quantitative analysis of individual case data, is expected by the end of December. In general, the findings of the focus groups were quite favorable, including:

1. Beneficial impact on the outcomes of youth involved in the juvenile justice system;

2. Effective in obtaining services for youth involved in the juvenile justice system, which encourages judges to place the youth in less restrictive settings and reduces the rates of recidivism;

3. Facilitates the collaboration in the development of service plans for youth through its knowledge of, and communication and partnership with, other agencies involved in the youth's treatment. The result is both improved outcomes for individual cases and systemic change;

4. Helps parents to become better advocates for their children.

Recommendations for the improvement of the TeamChild Program include:

1. Expansion of the program to permit earlier intervention with younger at-risk youth, who have not yet entered the juvenile justice system;

2. More involvement with Family With Service Needs cases;

3. Increased collaboration with mental health service providers;

4. More training of probation and school staffs concerning the program, referral process, and risk factors to look for.

TeamChild Referral Criteria

TeamChild attorneys represent youth involved with the Superior Court for Juvenile Matters in Hartford to obtain educational, mental health and other social services which the youth need to minimize their involvement with the juvenile justice system. Criteria for referrals to TeamChild include:

- The youth must be involved with the Superior Court for Juvenile Matters in Hartford due to either a delinquency or a Family with Service Needs matter;
- The youth must be reasonably expected to be in need of, and able to benefit from, educational, mental health, or other social services in order to minimize the youth's involvement with the juvenile justice system;
- The youth may be referred by his/her public defender or other attorney, probation officer, parent, therapist, or anyone else knowledgeable about the youth's situation and need for these services.

Representation in such cases will depend on existing caseloads and other factors including:

- Whether the child is being excluded from, or likely to be excluded from, school due to the incident giving rise to the court case;
- The age of the youth;
- Whether the youth has been, or should be identified as a student eligible
- Need for special education and related services;
- Whether there is a legal impediment to the youth's receipt of needed services;
- Whether other resources are available to deal with the case;
- The systemic importance of the issue;
- The likelihood of a beneficial impact.

Roger Bunker, Esq.
Center for Children's Advocacy

Teen Legal Advocacy Clinic Expands: Two New Locations

Center for Children's Advocacy has expanded its Teen Legal Advocacy Clinic to enable us to reach more teens in the community. New locations include:

Youth Opportunities Hartford North campus
1229 Albany Avenue, Hartford
Tuesday afternoon

Youth Opportunities Hartford South campus
331 Wethersfield Avenue, Hartford
Thursday afternoon

The Clinic provides individual representation on issues affecting teens, as well as trainings, legal rights brochures, and systemic advocacy. New brochure topics include: Truancy, Cash Assistance to Teen Parents, and the Educational Rights of Homeless Students. Please see complete list of brochure topics on the order form on this page, or go to www.kidscounsel.org to download an order form.

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65 Elizabeth Street, Hartford, CT 06105

Order Form CCA Publications and Videos

Center for Children's Advocacy Publications and Video Package

Please complete below to order CCA publications or videos:

Who Will Speak for Me? *Video and written materials for all attorneys who represent children. Please enclose $20 (plus 6% CT sales tax as applicable) for each video package ordered. Qty ordered* _____

I Will Speak Up for Myself *Video, booklet and Important Information Card detailing the legal rights of children in foster care. Please enclose $20 (plus 6% CT sales tax as applicable) for each video package ordered. Qty ordered* _____

Now available

Adolescent Health Care: The Legal Rights of Teens
Newly updated comprehensive look at Q&A raised when representing teens with health, mental health and reproductive health needs. Please enclose $20 (plus 6% CT state sales tax as applicable) for each book ordered. Qty ordered _____

Legal Representation of Status Offenders: Families with Service Needs and Youth in Crisis
Comprehensive look at critical issues of representation in FWSN and YIC cases, including resources and forms. Please enclose $20 (plus 6% CT state sales tax as applicable) for each book ordered. Qty ordered _____

Is It Confidential? *Important Information for teens about STDs, HIV/AIDS, Birth Control and Abortion. Please enclose $5 (plus 6% CT state sales tax as applicable) for ten copies . Qty ordered* _____

Legal Rights Brochures for Teens *A series of brochures on subjects such as Truancy, Emancipation, Housing Assistance, Homelessness, Teen Parenting, Mental Health, Special Education, Searches in School, Immigration. Please enclose $10 for each set (plus 6% CT state sales tax as applicable) Sets ordered* _____

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