



UNC
SCHOOL OF GOVERNMENT

2019 Parent Attorney Conference

August 8, 2019 / Chapel Hill, NC

Sponsored by the

The University of North Carolina School of Government and
Office of Indigent Defense Services

ELECTRONIC COURSE MATERIALS



2019 Parent Attorney Conference *Build Your Toolkit*

August 8, 2019 / Chapel Hill, NC

Co-sponsored by the UNC-Chapel Hill School of Government
& Office of Indigent Defense Services

AGENDA

8:00 to 8:30	Check-in
8:30 to 8:45	Welcome <i>John Rubin, Albert Coates Professor</i> UNC School of Government, Chapel Hill, NC
8:45 to 10:15	Case Law Update [90 min] <i>Sara DePasquale, Assistant Professor of Public Law and Government</i> UNC School of Government, Chapel Hill, NC
10:15 to 10:30	Break
10:30 to 11:00	Legislative Update [30 min] <i>Wendy Sotolongo, Parent Defender</i> Office of Indigent Defense Services, Durham, NC
11:00 to 12:00	Effective Use of Experts [60 min] <i>Lyana Hunter, Assistant Public Defender, Wilmington, NC</i> <i>Alexis Perkins, Assistant Public Defender, Wilmington, NC</i>
12:00 to 12:45	Lunch (<i>provided in building</i>) *
12:45 to 2:00	Bringing the Data to Life: Data as a Tool for Parent Representation [75 min] <i>Cristina Freitas, JD, MPH and Debbie Freitas, JD, MPH</i> Freitas & Freitas, LLP, Lowell, MA
2:00 to 3:00	Using Technology to Make Your Practice Efficient Locating Clients and Witnesses (satisfies technology requirement) [60 min] <i>Melani McIntosh, Investigator</i> <i>Stephanie Mieldon, Investigator</i> Office of the Public Defender, Charlotte, NC <i>Anne Wright, Attorney at Law, Reeves Divenere Wright</i> Boone, NC
3:00 to 3:15	Break (<i>light snack provided</i>)
3:15 to 4:15	Addressing Trauma in Child Welfare Cases [60 min] <i>Julianne Ludlam, Ph.D.</i> KKJ Forensic & Psychological Services, Durham, NC

CLE HOURS: 6.25
(Includes 1 hour of Technology)

* IDS employees may not claim reimbursement for lunch

Child Welfare Case Update

August 1, 2018 - July 16, 2019
Parent Attorneys' Conference (2019)

To view these and other summaries of opinions published on or after January 1, 2014 by the NC Appellate Courts, go to the [Child Welfare Case Compendium](#) on the School of Government's website

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Indian Child Welfare Act

Notice Requirements

In re A.P., ___ N.C. App. ___ (August 7, 2018)

Held: Remanded to determine and ensure that the ICWA notification requirements are met

- Facts and procedural history: In March 2016, Mecklenburg County DSS filed a neglect and dependency petition and obtained a nonsecure custody order for A.P. In June 2016, A.P. was adjudicated neglected and dependent and placed in DSS custody. Respondent mother appealed, arguing the Mecklenburg County DSS director lacked standing to file the petition. The Court of Appeals held that the Mecklenburg County DSS director lacked standing to file a petition because the child did not reside and was not found in Mecklenburg County when the petition was filed. The N.C. Supreme Court reversed the Court of Appeals and remanded the case to the Court of Appeals to address the other issues raised by respondent mother. One issue is whether the adjudicatory hearing should have been continued for further investigation into the applicability of the Indian Child Welfare Act (ICWA). The evidence at the adjudicatory hearing included a DSS form that indicated “A.P. and her mother have ‘American Indian Heritage’ within the ‘Cherokee’ and ‘Bear foot’ tribes.” Sl. Op. at 9. Respondent mother’s attorney raised the issue that the federally recognized tribes were not provided with any notice under ICWA. The trial court noted it made an ICWA inquiry at the hearing on the need for continued nonsecure custody, found ICWA did not apply, and did not order DSS to provide notice the tribe (there is no transcript of the hearing on the need for nonsecure custody in the record).
- When the trial court knows or has reason to know that a child is an Indian child, the party seeking foster care placement (or a termination of parental rights) of that Indian child must comply with the notice provisions set forth in 25 U.S.C. 1912. A hearing may not be held until at least 10 days after the parent or Indian custodian and Indian tribe or BIA secretary have received the notice, and if requested, an additional 20 days must be granted. 25 U.S.C. 1912. An “Indian child” is any unmarried person under the age of 18 who is either (1) a member of a federally recognized Indian tribe or (2) eligible for membership in a federally recognized Indian tribe and the biological child of a member of a federally recognized Indian tribe. 25 U.S.C. 1903(4); *In re A.D.L.*, 169 N.C. App. 701 (2005). The court has reason to know a child is an “Indian child” if any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe or organization, or agency informs the court that it has discovered information indicating that the child is an Indian child. 25 C.F.R. 23.107(c)(7). The tribe determines the child’s status as an Indian child. The respondent mother’s potential Indian heritage with a federally recognized tribe is sufficient to provide the court with reason to know the child is an Indian child. The trial court should confirm and work with the tribes to verify whether the child is a member and must treat the child as an Indian child until it is determined on the record that the child does not meet the definition of Indian child. 25 C.F.R. 23.107(b)(1)–(2). The trial court must direct DSS to send notice to the tribes in compliance with 25 C.F.R. 23.111. If a response from the tribe is not received, “the Respondent-mother must meet her burden to produce evidence to sustain ICWA’s application to this case.” Sl. Op. at 10. This interpretation aligns with previous holdings that have erred on the side of caution to ensure ICWA notification requirements are addressed

rather than risk the trial court's orders being voided in the future for failing to comply with ICWA requirements. *See In re A.R.*, 227 N.C. App. 518 (2013); *In re C.P.* 181 N.C. App. 698 (2007).

- **Author's Note:** Prior to December 12, 2016, there were no effective federal regulations implementing ICWA, which is a federal law that was enacted in 1978. However, in this opinion, the Court of Appeals discusses and applies some, but not all, of the regulations that became effective after the orders subject to the appeal were entered. Further discussion and hyperlinks to resources re: ICWA can be found in the A/N/D TPR Manual, Chapter 13.2, [here](#).

Subject Matter Jurisdiction; Tribal Court

In re Adoption of K.L.J., ___ N.C. App. ___ (July 16, 2019)

Held: Affirmed

- **Facts:** Two children, who are members of the Cheyenne River Sioux Tribe and are "Indian children" under ICWA, are the subject of this adoption proceeding. They had previously been the subject of a child custody action in South Dakota, where their parents' rights were terminated. The Tribal Court assumed jurisdiction and placed the children in the care of their paternal aunt, the Indian custodian, and then closed and dismissed the case. Months later, the aunt agreed to the appointment of a guardian for the children by the New Hanover County Superior Court Clerk. Two years later, the guardians filed adoption petitions for the children. After the petitions were filed, the clerk ordered the petitioners to give notice to the Tribe and to the aunt. The Tribal Court did not timely respond, but the aunt did and intervened requesting the children's return. The adoption proceeding was transferred to district court to address the issue of subject matter jurisdiction. Before the district court hearing, the aunt filed an ex parte motion with the Tribal Court asking it to assume jurisdiction and provided to the NC district court a faxed copy of what is purported to be an order of jurisdiction from the Tribal Court. The NC district court concluded it had jurisdiction over the adoption proceedings and granted both adoptions. The aunt appeals arguing the Tribal Court had exclusive subject matter jurisdiction and the NC district court failed to give full faith and credit to the Tribal Court order.
- **Standard of Review:** Subject matter jurisdiction is reviewed de novo. Whether a trial court has properly provided full faith and credit to a foreign judgment is also reviewed de novo.
- Under 25 U.S.C. 1911(a) of ICWA, a tribal court has exclusive jurisdiction of a child custody proceeding in 3 circumstances: "(1) over an Indian child who resides within the reservation; (2) over an Indian child domiciled within the reservation; and (3) over an Indian child who is a ward of the tribal court." Sl. Op. at 6. In this case, the children did not reside and were not domiciled within an Indian reservation. ICWA does not define a tribal court ward or address who makes the finding as to the child's status. Black's law dictionary definition of "ward of the state" applies – "someone who is housed by, and receives protection and necessities, from the government." Sl. Op. at 7. Under this definition, once a child has stopped being housed by or provided protections or necessities from the tribe, she is no longer the tribal court's ward. Here, the tribe did not provide protections or necessities to the children; instead, guardianship was obtained through the NC courts.
- Under 25 U.S.C. 1911(d) of ICWA, the state court must give full faith and credit to judicial proceedings of any Indian tribe that are applicable to child custody proceedings to the same extent as the state court gives to other entities. The Uniform Enforcement Foreign Judgments

Act (UEFJA) applies, and it requires the party seeking to enforce a foreign judgment to file a properly authenticated foreign judgment with the office of a clerk of superior court in any NC county and an accompanying affidavit attesting that the judgment is both final and unsatisfied in whole or part. There was no such filing here but instead the only copy of the Tribal Court's order is an unauthenticated copy. Additionally, the adoption petitioners and children's due process rights were not protected in Tribal Court as there is no record of notice to and a meaningful opportunity to participate in that proceeding by either the adoption petitioners or children (via their GAL). "Due process will not allow the best interests of the children to be silenced." Sl. Op. at 11. The district court did not err in failing to give full faith and credit to the tribal court order.

Abuse, Neglect, Dependency

Adjudication: Neglect

In re J.A.M., ___ N.C. ___ (Feb. 1, 2019)

Held: Affirmed

- Facts: DSS received a report about the child's birth and a petition was filed alleging neglect because of the parents' histories with DSS for their other children. Mother's significant 10-year involvement with DSS regarding her other children results from her older children's exposure to her violent relationships. In the most serious incident, one child suffered life-threatening injuries caused by his father/mother's partner at the time; mother delayed obtaining immediate assistance for the child, and she refused to acknowledge the child's significant special needs resulting from the injuries. Mother's parental rights to her six other children were terminated for her failure to change her pattern of domestic violence. Father's history regarding his other child was also related to domestic violence.
- Procedural History: This is the second appeal to the NC Supreme Court of an adjudication order of neglect (the initial dispositional order is not the subject of the appeal). In the first appeal, the Court of Appeals (COA) reversed the adjudication after determining the evidence did not support the findings of fact and the findings of fact did not support the conclusion of neglect based on an injurious environment. The Supreme Court granted a discretionary review and held the COA applied the wrong standard of review and reversed and remanded the decision to the COA for application of the correct standard. On remand, the COA majority affirmed the neglect adjudication after holding the findings were sufficient and "our Court may not reweigh the underlying evidence on appeal." Sl. Op. at 9. The dissent determined there was no clear and convincing competent evidence that the child was at substantial risk of neglect. That opinion was appealed to the Supreme Court.
- Issue: "Whether the Court of Appeals majority correctly determined that the clear and convincing evidence and the trial court's findings of fact supported its conclusion of law that the juvenile J.A.M. was neglected." Sl. Op. at 1. Answer: Yes.
- "A court may not adjudicate a juvenile neglected solely based upon previous Department of Social Services involvement relating to other children. Rather, in concluding that a juvenile 'lives in an environment injurious to the juvenile's welfare,' N.C.G.S. 7B-101(15), the clear and convincing evidence in the record must show current circumstances that present a risk to the juvenile." Sl. Op. at 11. The prior case alone is not determinative. The trial court has discretion

to determine how much weight to give evidence of a prior neglect determination. Regarding a newborn, the trial court's decision must be predictive in nature in assessing whether there is a substantial risk of future abuse or neglect to the child based on the historical facts of the case.

- In this case, there were other factors the trial court found, all of which were supported by clear and convincing evidence and support the conclusion of neglect. The court found mother failed to acknowledge her role in the TPR to her other six children, denied the need for services with DSS, and was involved with the child's father who had a domestic violence history which is one of the reasons her other children were removed from her care. These findings were supported by exhibits of the TPR and adjudication/disposition orders for mother's six other children and the criminal record of respondent father's convictions for assault on a female (his sister), (2) the unchallenged testimony of the DSS social worker that mother rejected DSS services as unnecessary, and (3) mother's testimony that she knew father had been charged with assault on a female but did not ask him if it was true and that she had no role in her other child's serious injuries.
- "The trial court's findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings." Sl. Op. at 10. The trial court assesses a witness's demeanor and credibility "often in light of inconsistencies or contradictory evidence." Sl. Op. at 15. Here, the court made a credibility determination of the testimony that supported its finding that mother failed to take responsibility for her role in the TPR of her other children.

Evidence: Rule 803(24) Residual Exception re: Child's Statements

In re W.H., ___ N.C. App. ___ (August 21, 2018) (motion to publish granted)

Held: Affirmed

- Facts: This case involves 2 boys and 2 girls who were born to mother and father. In December 2011, mother reported to DSS that father sexually abused the older daughter. The daughter was interviewed by the DSS social worker and disclosed the sexual abuse. In the following month, the daughter had a forensic evaluation at the TEDI Bear Clinic where she did not disclose the sexual abuse, and the report indicated that recantation of child sexual abuse is not uncommon. Later that month, the daughter met the DSS social worker again and redisclosed the sexual abuse. More than 3 years later, DSS reopened the case when the younger sister disclosed sexual abuse by the father. A different DSS social worker interviewed both daughters and both described inappropriate sexual contact by the father. The younger daughter disclosed to the TEDI Bear Clinic. Both girls were interviewed by the sheriff's department and stated that their father did something they "didn't like." At a preliminary hearing in the abuse and neglect proceeding, the trial court determined the girls were unavailable to testify and the residual hearsay exception applied to the girls' statements to the interviewers at the TEDI Bear Clinic, DSS social workers, and law enforcement. All 4 children were adjudicated neglected and the girls were adjudicated abused. Father appeals.
- The appellate court reviews the admission of evidence under the residual hearsay exception for an abuse of discretion, and "the appellant must show that '[he or she] was prejudiced and a different result would have likely ensued had the error not occurred.' " Sl. Op. at 5 (citation omitted).

- The residual hearsay exception in Rule 803(24) requires a 6-prong analysis by the trial court: “(1) proper notice has been given; (2) the hearsay statement is not specifically covered elsewhere; (3) the statement possesses circumstantial guarantees of trustworthiness; (4) the statement is material; (5) the statement is more probative than any other evidence which the proponent can procure through reasonable efforts; and (6) the interest of justice will be best served by admission.” Sl. Op. at 5.
 - Notice is sufficient when “it gives the opposing party ‘fair opportunity to meet the proffered evidence.’ ” Sl. Op. at 5 (citation omitted). Here, notice was sufficient to allow the father to prepare. DSS sent the father written notice of its intent to use the daughters’ out-of-court statements that were made to the DSS social workers, law enforcement, and the TEDI Bear Clinic between 1 week – 7 months before the statements were introduced at the various hearings and trial. Additionally, the statements were provided to the father months before the notice was sent to him.
 - Factors a court considers when determining whether a statement is trustworthy include the declarant’s (1) personal knowledge of the underlying event, (2) motivation to be truthful, (3) history of recanting, and (4) practical availability at trial for cross-examination. Although recantation is a factor, “none of these four factors, alone or in combination, may conclusively establish or discount the statement’s circumstantial guarantees of trustworthiness.” Sl. Op. at 6-7 (citations omitted). The lack of a finding about the 2012 TEDI Bear interview is not fatal.
 - The trial court determined the daughters were unavailable to testify after finding testifying would traumatize the daughters, cause them confusion, and that there would be a risk that they would not testify truthfully due to guilt and fear. The findings that guilt and fear may impact the testimony distinguish this case from *State v. Stutts*, 105 N.C. App. 557 (1992), which held any statements (including out-of-court statements) made by the child were untrustworthy because she could not tell truth from fantasy.

Disposition: Evidence, Findings, Conclusions of Law

In re B.C.T., ___ N.C. App. ___ (May 7, 2019)

Held: Reverse and Remand

- **Facts:** DSS received a report about mother’s home and her younger child. At the time, her older child was living with a family friend. Mother, her live-in boyfriend (a caretaker), and DSS entered into a family services agreement that focused on emotional and mental health issues, family relationships/domestic violence, and parenting skills. Mother voluntarily agreed to allow her younger child to be placed with the same family friend who was caring for her older child. Months later, DSS filed two petitions (one for each child) alleging abuse and neglect and noting that the petitions were filed because boyfriend, who mother was still living with, had not completed the family services agreement although mother had made progress on her plan. Based on mother’s stipulations, the children were adjudicated neglected. Mother complied with the case plan, exceeded DSS recommendations, and throughout the entirety of the case (investigation through appeal) had unsupervised and unlimited contact with both children. At disposition, DSS recommended the younger child’s reunification with mother but based on the

wishes of the older child and time that he had spent with family friend, that custody of the older child be ordered to family friend. The court ordered (1) the younger child remain in DSS custody with placement with family friend and supervised visits with mother of at least one hour every other week, and (2) Chapter 50 custody (via G.S. 7B-911) of the older child to family friend with one hour of supervised visits per week with mother. Mother appeals the disposition orders.

- Findings of Fact: The standard of review is whether the findings are supported by competent evidence. Findings based on competent evidence are binding even when there is evidence that would support a contrary finding. Here, the challenged findings were not supported by competent evidence.
 - The finding that the family friend's home is safe, suitable, and appropriate is not supported by the evidence, which consists of the children having toys that a child desires including a four-wheeler or ATV and video games. Having what one desires is not necessarily in the best interests of the child. There is no evidence regarding substantive information about the home or care of the children.
 - The finding that it is not likely the child will be returned home within the next 6 months and placement with the parent is not in the older juvenile's best interests is not supported by the evidence. The evidence showed mother did everything required of her.
 - Findings related to conditions which led to the child's removal still exist, a return home is contrary to the child's welfare, and mother is not a fit and proper person are not supported by the evidence. The evidence showed that by the disposition hearing mother and boyfriend had fully complied with the family services agreement and DSS recommendations. There was no evidence that the conditions leading to the removal still existed other than the older child wished to remain with family friend. Custody to a third party requires that the parent is unfit or has acted inconsistently with her constitutionally protected rights and cannot be based on a child's preference or the material advantages a third party may offer the child. There were no findings and no evidence that mother acted inconsistently with her parental rights.
- Conclusion of Law of Child's Best Interests: A conclusion of law must be supported by findings. A determination of best interests is reviewed for an abuse of discretion. Conclusions of law are reviewed de novo. Best interests findings include characteristics of the parties competing for custody and may concern physical, mental, or financial fitness or other relevant factors and are more than mere conclusions. *See Hunt v. Hunt*, 112 N.C. App. 722 (1993). Here, the findings cannot support the conclusion of law regarding the child's best interests as the evidence does not support the findings.

Visitation

In re J.L., ___ N.C. App. ___ (March 19, 2019)

Held: vacated and remanded in part; affirmed in part

- Facts: After filing a petition alleging neglect and dependency, DSS obtained nonsecure custody of a newborn and placed the child with Mr. and Mrs. C (foster parents). After adjudication, the initial disposition continued custody with DSS, who continued the child's placement with Mr. and Mrs. C. In a permanency planning order, custody with DSS continued (as did DSS's

placement with Mr. and Mrs. C); reunification efforts with mom were ceased; and a primary plan of guardianship with a court-approved caretaker and secondary plan of adoption was ordered. Mother's visitation was ordered for one hour of supervised visits/month. At a subsequent permanency planning hearing, DSS and the GAL recommended a change in placement to foster parents who had adopted two of the child's older half-siblings. The permanency planning order awarded guardianship to Mr. and Mrs. C. and ordered that mom have no in-person visits with the child but could have telephonic communication that was monitored by Mr. and Mrs. C. Respondent mother appeals.

- When awarding guardianship, a determination that the following rights and responsibilities remain with mother - inheritance, financial responsibility, and visitation - is a conclusion of law. That conclusion of law is not inconsistent with a provision for no visitation but for monitored telephonic communication. The court determines the scope and duration of visitation that is in the child's best interests and consistent with his health and safety. A review of an order denying visitation is for an abuse of discretion. There was no abuse of discretion. The court's ultimate finding that visitation was not in the child's best interests and consistent with his health and safety was supported by evidentiary findings of mother's (1) long CPS history resulting in the removal of her other children with the same issues identified for this child, (2) minimal participation in services to resolves the issues, (3) failure to attend visits, and (4) executed relinquishment of the child.
- G.S. 7B-905.1(d) requires that "if the court retains jurisdiction, all parties shall be informed of the right to file a motion for review of any visitation plan entered..." Neither the order nor transcript review indicate the court notified mother of her right to file a motion for review of the visitation plan. Vacated and remanded for compliance with G.S. 7B-905.1(d).

In re Y.I., ___ N.C. App. ___ (Dec. 4, 2018)

Held: Affirmed in part; vacated in part and remanded

- Facts: Two children were adjudicated neglected and dependent after being removed from their mother's home. Upon learning of the children's removal, father immediately began working with DSS. Respondent mother was ordered to comply with her case plan, and respondent father had an out-of-home services plan. At a permanency planning hearing, the court ordered custody of the children to their father, visitation with the mother at a supervised visitation center, and relieved DSS and the attorneys from the action. Respondent mother appeals.
- The order complies with the visitation provisions set forth in G.S. 7B-905.1: the minimum length (minimum of one hour each visit), frequency (twice per month), and whether the visits shall be supervised (occur at supervised visitation center). However, the order does not addresses what costs (if any) of the supervised visitation to be held at the specified center and who is to bear the expense. It appears that respondent mother would bear the cost since DSS was relieved, but the court must first determine whether mother has an ability to pay. Visitation vacated and remanded for further findings of fact.

In re W.H., ___ N.C. App. ___ (August 21, 2018) (motion to publish granted)

Held: Affirmed

- Facts: This case involves 2 boys and 2 girls who were born to mother and father. The girls were adjudicated abused based on father sexually abusing them. All the children were adjudicated neglected. Respondent father appeals the adjudication and dispositional order.
- Dispositional orders of visitation are reviewed for an abuse of discretion. There was no abuse of discretion when the trial court ceased visits between the father and all the children when determining visitation was against all of the children's best interests, health, and safety. "Father's conduct toward his daughters directly influenced the trial court's determinations, but only insofar as it suggested that further contact could put the sons' safety at risk." Sl. Op. at 9.

First Permanency Planning Hearing: Reunification vs. Reunification Efforts

In re M.T.-L.Y., ___ N.C. App. ___ (May 21, 2019)

Held: Affirmed in part, vacated in part, and remanded

- Facts: An infant was adjudicated neglected. At disposition, the child was placed in DSS custody. At the dispositional hearings (this author believes those hearings were the initial dispositional and then a review hearing), the court ordered as conditions of reunification that mother abstain from alcohol or drugs, submit to drug testing as requested by DSS, have a psychological evaluation, enter into a family services agreement for reunification, complete parenting classes, attend her two weekly supervised visits, confirm her employment and wages, notify DSS within 24 hours of any change in her employment or household status, participate in the child's medical appointments, and maintain regular communication with DSS. At the first permanency planning hearing, mother did not appear but was represented by her attorney. The court found that mother did not comply with her court-ordered conditions and that there was slim likelihood of reunification, mother failed to make adequate progress within a reasonable period of time, was not available to the court, and acted inconsistently with the child's health and safety. The court ordered (1) DSS cease reunification efforts and (2) a primary permanent plan of adoption and secondary plan of guardianship. ("PPO"). DSS filed a motion to TPR, which was granted. Mother appeals the TPR and as part of that appeal, the PPO.
- Reunification as a Permanent Plan: At the permanency planning stage involving a neglected juvenile, the court must adopt concurrent permanent plans, designating a primary and secondary plan. When determining which plans to order, reunification is addressed in G.S. 7B-906.2(b). Although that statutory language seems to plainly allow the trial court to omit reunification as permanent plan in any permanency planning hearing (PPH), this court is bound by *In re C.P.*, 812 S.E.2d 188 (2018). C.P. held the trial court may remove reunification as a concurrent plan in "subsequent" PPHs and not the initial PPH. Bound by that holding, the trial court erred in removing reunification as a concurrent plan in the first and only PPH. The PPO and TPR are vacated.
- Cessation of Reunification Efforts: Before *In re C.P.*, the court of appeals held in *In re H.L.*, 807 S.E.2d 685 (2017), that reunification efforts could be ceased at the first permanency planning hearing if the required findings of G.S. 7B-906.2(b) were made. Although *In re C.P.* believed the trial court is prohibited from ceasing reunification efforts at the first PPH, it recognized it was

bound by the prior holding of *In re H.L.* The standard of review of an order ceasing reunification efforts is whether the trial court made appropriate finding based on credible evidence; whether the findings support the conclusions; and whether the court abused its discretion with respect to disposition. The court's findings are not contradictory. "[P]artially performing a required condition does not necessarily preclude a conclusion that the performance is inadequate". Sl. Op. at 22. The findings are sufficient and are based on evidence that mother failed to verify her participation in substance abuse treatment, her employment and her living arrangements with DSS; did not comply with the family services agreement, visitation schedule, drug testing, or attendance at her child's medical appointments; violated the safety plan; and tested positive for drugs. Although the court did not use the statutory language in G.S. 7B-906.2(b) that reunification efforts clearly would be unsuccessful or inconsistent with the juvenile's health and safety, the findings address the statute's concerns. See *In re L.M.T.*, 367 N.C. 165 (2013).

- Reservations about *In re C.P.* are based on the statutory language in G.S. 7B- 906.2(c) and 7B-906.1(d)(3), which was not examined in C.P. Those statutes seem to contradict the interpretation of G.S. 7B-906.2(b) in C.P. Additionally, the holding of C.P. raises more questions than answers, affecting "what 'efforts' social services must perform [under G.S. 7B-906.2(b)] when reunification efforts have been ceased but reunification is still included in a permanent plan" (Sl. Op. at 18); rights (or lack thereof) to appeal an order ceasing reunification efforts but keeping reunification as a permanent plan; and creating a dichotomy between reunification and reunification efforts as opposed to keeping them as a unitary concept. "To avoid confusion of our DSS workers and trial courts and to promote permanency for children in these cases, we encourage the North Carolina General Assembly to amend these statutes to clarify their limitations." Sl. Op. at 19.

Permanency Planning Hearing: Permanent Plan Required

In re D.A., ___ N.C. App. ___ (Dec. 4, 2018)

Held: Reversed and remanded

- Facts: In May 2017, the child was adjudicated neglected. The first review and permanency planning hearing was held in June 2017, and the court awarded DSS custody with a trial home placement with respondent father. In August 2017, the child was removed from father's home and placed with maternal grandparents. A subsequent permanency planning hearing was held in October 2017, and the permanency planning order concluded respondent acted inconsistently with his parental rights and ordered legal custody to the maternal grandparents; waived further review hearings; and relieved DSS, the child's GAL, and the respondent's attorney.
- Issue on appeal: Respondent father appeals arguing the findings do not support the cessation of reunification efforts. "Because the trial court failed to comply with the statutory mandate and adopt a permanent plan for [the child], however, we [the court of appeals] decline to address the argument, and reverse and remand" for the trial court to adopt one or more permanent plans as required by G.S. 7B-906.2. Sl. Op. at 6.
- Under G.S. 7B-906.2(a)–(b), (1) the trial court "shall" adopt one or more concurrent permanent plans with a primary and secondary plan identified; (2) reunification "shall" remain a primary or secondary plan unless certain findings are made; and (3) concurrent planning "shall" continue

until a permanent plan has been achieved. “Shall” is a mandate to trial judges, and failure to comply with that mandate is reversible error. The trial court never established a permanent plan for the child as required by G.S. 7B-906.2.

Permanency Planning Hearing: Role of Foster Parents

In re J.L., ___ N.C. App. ___ (March 19, 2019)

Held: vacated and remanded in part; affirmed in part

- Facts: After filing a petition alleging neglect and dependency, DSS obtained nonsecure custody of a newborn and placed the child with Mr. and Mrs. C (foster parents). After adjudication, the initial disposition continued custody with DSS, who continued the child’s placement with Mr. and Mrs. C. In a permanency planning order, custody with DSS continued (as did DSS’s placement with Mr. and Mrs. C); reunification efforts with mom were ceased; and a primary plan of guardianship with a court-approved caretaker and secondary plan of adoption was ordered. Mother’s visitation was ordered for one hour of supervised visits/month. At a subsequent permanency planning hearing, DSS and the GAL recommended a change in placement to foster parents who had adopted two of the child’s older half-siblings. Although not parties, Mr. and Mrs. C as the current placement provider testified, and the court permitted their counsel to facilitate their testimony on direct examination. Two experts testified. The expert procured by Mr. and Mrs. C and called by the child’s GAL attorney advocate was directly examined by Mr. and Mrs. C’s counsel. The permanency planning order awarded guardianship to Mr. and Mrs. C. and ordered that mom have no in-person visits with the child but could have telephonic communication that was monitored by Mr. and Mrs. C. Respondent mother appeals.
- Role of foster parents and their attorney. With limited exceptions, a foster parent is not a party to the action but the court is statutorily required to consider information from any person providing care for the juvenile and any other person that aids in the court’s review. G.S. 7B-401.1(e1), (h); -906.1(c). “The trial judge has inherent authority to supervise and control trial proceedings. The manner of the presentation of the evidence is largely within the sound discretion of the trial judge and his control of a case will not be disturbed absent a manifest abuse of discretion.” Sl. Op. at 10 (citation omitted). Mother did not show an abuse of discretion when the court permitted Mr. and Mrs. C’s counsel to (1) facilitate their testimony by direct examination and (2) as requested by the child’s GAL attorney advocate conduct the direct and redirect of the expert witness. Mr. and Mrs. C were not permitted to intervene, and their counsel did not present other witnesses, introduce exhibits, cross-examine witnesses, make objections, or present closing arguments as a party is permitted to do. “This holding is limited to the specific facts of this case.” Sl. Op. at 12.

Permanency Planning Hearing: Competent Evidence

In re J.L., ___ N.C. App. ___ (March 19, 2019)

Held: vacated and remanded in part; affirmed in part

- Facts: After filing a petition alleging neglect and dependency, DSS obtained nonsecure custody of a newborn and placed the child with Mr. and Mrs. C (foster parents). After adjudication, the initial disposition continued custody with DSS, who continued the child’s placement with Mr.

and Mrs. C. In a permanency planning order, custody with DSS continued (as did DSS's placement with Mr. and Mrs. C); reunification efforts with mom were ceased; and a primary plan of guardianship with a court-approved caretaker and secondary plan of adoption was ordered. Mother's visitation was ordered for one hour of supervised visits/month. At a subsequent permanency planning hearing, DSS and the GAL recommended a change in placement to foster parents who had adopted two of the child's older half-siblings. Although not parties, Mr. and Mrs. C as the current placement provider testified, and the court permitted their counsel to facilitate their testimony on direct examination. Two experts testified. The expert procured by Mr. and Mrs. C and called by the child's GAL attorney advocate was directly examined by Mr. and Mrs. C's counsel. The permanency planning order awarded guardianship to Mr. and Mrs. C. and ordered that mom have no in-person visits with the child but could have telephonic communication that was monitored by Mr. and Mrs. C. Respondent mother appeals.

- The standard of review of a permanency planning order is whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law. At a permanency planning hearing (PPH), the court may consider any evidence it finds to be relevant, reliable, and necessary to determine the child's needs and most appropriate disposition. G.S. 7B-906.1(c). Mother challenges the expert doctor's testimony that did not involve a personal evaluation of the child but was based on a review of reports and a prior PPH as insufficient, unreliable, and too speculative to support the court's findings that the infant would suffer trauma from being removed from the only home he has ever known. The doctor's testimony about her experience and the literature regarding child attachments and the loss of those attachments resulting in trauma and other negative consequences was sufficient competent evidence to support the findings.

Permanency Planning: Parent's Constitutional Rights

In re J.L., ___ N.C. App. ___ (March 19, 2019)

Held: vacated and remanded in part; affirmed in part

- Facts: After filing a petition alleging neglect and dependency, DSS obtained nonsecure custody of a newborn and placed the child with Mr. and Mrs. C (foster parents). After adjudication, the initial disposition continued custody with DSS, who continued the child's placement with Mr. and Mrs. C. In a permanency planning order, custody with DSS continued (as did DSS's placement with Mr. and Mrs. C); reunification efforts with mom were ceased; and a primary plan of guardianship with a court-approved caretaker and secondary plan of adoption was ordered. At a subsequent permanency planning hearing, the court awarded guardianship to Mr. and Mrs. C. and ordered that mom have no in-person visits with the child but could have telephonic communication that was monitored by Mr. and Mrs. C. Respondent mother appeals.
- Parent's Constitutional Rights & Clear and Convincing Standard. When considering whether to award custody or guardianship to a nonparent, the court must address whether the parent is unfit or acted inconsistently with her constitutionally protected status as a parent. That determination must be made by clear and convincing evidence and failure to indicate that standard was applied is error. Neither the permanency planning order nor transcript of the hearing indicate that the standard was applied. Remanded for findings.

Permanent Plan: Guardianship/Custody; Relative Preference; ICPC; Cease Reunification Efforts

In re I.K., ___ N.C. App. ___ (August 7, 2018)

Held: Vacated and remanded for additional findings

- **Facts:** Two children were adjudicated dependent based on circumstances related to their parents' inability to provide proper care and supervision due to substance use, domestic violence, and unstable housing. Prior to the filing of the petition, the children were living with their maternal grandmother. The children continued to remain in their grandmother's care throughout the course of this dependency action. The permanency planning order that is the subject of this appeal awarded guardianship of both children to the grandmother and ceased reunification efforts.
 - **Author's Note:** The opinion refers to the cessation of reunification efforts and appears to be using that term synonymously with eliminating reunification as a permanent plan. *See In re J.A.K.*, 812 S.E.2d 716, fn 4 (2018). This author believes the order appealed is the elimination of reunification and resulting cessations of reunification efforts as the court of appeals has previously held elimination of reunification as a permanent plan and the cessation of reunification efforts differ. *See In re C.P.*, 812 S.E.2d 188 (2018); *In re C.S.L.B.*, 803 S.E.2d 419 (2017). The order eliminating reunification as a permanent plan is an appealable order under G.S. 7B-1001(a)(5)a.
- Before a court may award guardianship [or custody] to a nonparent based upon the child's best interests, it must first find [by clear and convincing evidence] that the parent is unfit or has acted inconsistently with his/her constitutionally protected status to parent. The permanency planning order does not contain that finding. Respondents did not waive that finding as they were not afforded the opportunity to raise the issue at the permanency planning hearing when the trial court did not permit respondent's counsel to make arguments. *See In re R.P.*, 798 S.E.2d 428 (2017).
- **The standard of review** for a permanency planning order is limited to whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law, which are reviewed de novo. "Without adjudicated findings of fact this Court cannot conduct a meaningful review of the conclusions of law and 'test the correctness of the trial court's judgment.'" Sl. Op. at 13 (citation omitted).
- At a permanency planning hearing, reunification efforts may be ceased when the court makes findings under G.S. 7B-906.2(b) and (d). Two of the challenged findings that address the respondents' minimal progress are not sufficiently specific to allow the appellate court to determine what evidence in the record was relied upon to make that finding. Although evidence in the record supports the finding of minimal progress, there is also evidence that tends to show reasonable progress and supports another finding made by the trial court that respondents' compliance with their case plans were improving. The DSS and GAL reports that were incorporated by reference have mixed information regarding respondents' progress or lack thereof on their respective case plans. For example, when looking at the information since the last permanency planning hearing the reports address both the respondents' participation in treatment and parenting classes and their appearing to be under the influence of drugs at a family event.

Permanent Plan: Custody to Father, G.S. 7B-911

In re Y.I., ___ N.C. App. ___ (Dec. 4, 2018)

Held: Affirmed in part; vacated in part and remanded

- Facts: Two children were adjudicated neglected and dependent after being removed from their mother's home. Upon learning of the children's removal, father immediately began working with DSS. Respondent mother was ordered to comply with her case plan, and respondent father had an out-of-home services plan. At a permanency planning hearing, the court ordered custody of the children to their father, visitation with the mother at a supervised visitation center, and relieved DSS and the attorneys from the action. Respondent mother appeals.
- Standard of Review of a permanency planning order is whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law. The court makes a best interests determination, which is reviewed for an abuse of discretion.
- Based on the findings that (1) respondent mother has not made substantial progress to address the issues resulting in the children's removal; (2) the father worked with DSS and made adequate progress with a reasonable period of time; and (3) after being placed with their father, the children made significant progress in their educational needs, the court did not abuse its discretion in ordering custody to the father.
- When a child is placed in the custody of a parent or other person, G.S. 7B-911 requires the court to determine whether jurisdiction in the juvenile proceeding should be terminated and custody awarded through a G.S. Chapter 50 order. G.S. 7B-911 "does not expressly require that the court make a finding as to whether jurisdiction in the juvenile proceeding should be terminated and the matter transferred to a Chapter 50 action." Sl. Op. at 8. The findings and procedures under G.S. 7B-911(b) and (c) are required if the court chooses to terminate jurisdiction and transfer the matter to a chapter 50 custody case. Here the court did not choose to terminate its jurisdiction.

Appellate Issues (Standing, Vacated Order, Mootness)

In re J.L., ___ N.C. App. ___ (March 19, 2019)

Held: vacated and remanded in part; affirmed in part

- Facts: After filing a petition alleging neglect and dependency, DSS obtained nonsecure custody of a newborn and placed the child with Mr. and Mrs. C (foster parents). After adjudication, the initial disposition continued custody with DSS, who continued the child's placement with Mr. and Mrs. C. In a permanency planning order, custody with DSS continued (as did DSS's placement with Mr. and Mrs. C); reunification efforts with mom were ceased; and a primary plan of guardianship with a court-approved caretaker and secondary plan of adoption was ordered. At a subsequent permanency planning hearing, DSS and the GAL recommended a change in placement to foster parents who had adopted two of the child's older half-siblings; mother supported that change. The permanency planning order awarded guardianship to Mr. and Mrs. C. Respondent mother appeals.
- A motion to dismiss the appeal for lack of standing must be made by motion under N.C. App. Rule 37 and not raised for the first time in a brief.
 - *There is a concurrence on this issue.*

Although the appellees' motion to dismiss made through their brief is not properly before the court, standing is jurisdictional and is, therefore, a threshold issue the court must address. Respondent mother, as the party invoking the court's jurisdiction has the burden of proving she has standing to appeal. G.S. 7B-1001(a)(4) authorizes a parent who is a nonprevailing party to appeal. "A prevailing party is defined as one in whose favor the decision or verdict is rendered and judgment entered." Sl. Op. at 7 quoting *In re T.B.*, 200 N.C. App. 739, 746 (2009). The order appealed from awarded guardianship to Mr. and Mrs. C over mother's objection and request that her child be placed with the foster parents who adopted the child's half siblings; as such, mother is a nonprevailing party. This case is distinguishable from *In re C.A.D.*, 247 N.C. App. 552 (2016). There, the appellate court held the mother was not aggrieved by the trial court's order that did not place her child with maternal grandparents, who were parties in the action and could have but did not appeal. In this case, the foster parents the mother desired placement with are not parties and could not have independently appealed the order. Mother is asserting her parental interest in having the child placed in a home with his half siblings.

Appellate Record & Argument

In re B.C.T., ___ N.C. App. ___ (May 7, 2019)

Held: Reverse and Remand

- **Facts:** DSS received a report about mother's home and her younger child. At the time, her older child was living with a family friend. Mother, her live-in boyfriend (a caretaker), and DSS entered into a family services agreement that focused on emotional and mental health issues, family relationships/domestic violence, and parenting skills. Mother voluntarily agreed to allow her younger child to be placed with the same family friend who was caring for her older child. Months later, DSS filed two petitions (one for each child) alleging abuse and neglect and noting that the petitions were filed because boyfriend, who mother was still living with, had not completed the family services agreement although mother had made progress on her plan. Based on mother's stipulations, the children were adjudicated neglected. Mother complied with the case plan, exceeded DSS recommendations, and throughout the entirety of the case (investigation through appeal) had unsupervised and unlimited contact with both children. At disposition, DSS recommended the younger child's reunification with mother but based on the wishes of the older child and time that he had spent with family friend, that custody of the older child be ordered to family friend. The court ordered (1) the younger child remain in DSS custody with placement with family friend and supervised visits with mother of at least one hour every other week, and (2) Chapter 50 custody (via G.S. 7B-911) of the older child to family friend with one hour of supervised visits per week with mother. Mother appeals the disposition orders.
- **Voluntary Placement Reviews under G.S. 7B-910:** "The requirements of G.S. 7B-910 apply to a 'voluntary placement agreement' but not a 'temporary parental safety agreement.'" Sl. Op. at 12. Although mother argues that the court was required to hold a hearing within 90 days of the voluntary placement, the record is insufficient to consider the argument because the voluntary foster care agreement with DSS, if any, is not in the record on appeal. The appellant has the duty to include information that is necessary for an issue raised on appeal.
- **Swapping Horses:** At trial, DSS recommended the younger child be returned to mother's custody. The court is not required to, and did not, follow DSS recommendations. On appeal of

that disposition order, DSS argued the order should be affirmed. DSS is not exempt from the rule that “parties are not allowed to make different arguments on appeal than before the trial court to ‘swap horses between courts in order to get a better mount.’ ” Sl. Op. at 24. “DSS is not obligated to adopt a different position on appeal just to oppose the appealing parent if it has previously determined the parent has a safe and appropriate home and the child should be returned to the parent.” Sl. Op. at 25.

Appeal of Permanency Planning Order Moot by TPR Appeal

In re H.N.D., ___ N.C. App. ___ (April 16, 2019)

Held: Affirmed in part; Dismissed in part

- **Facts:** In 2014 one child was adjudicated dependent based upon an agreement between mother and DSS related to domestic violence between mother and father. In 2015, a newborn sibling was adjudicated dependent based upon a stipulation by mother about continued domestic violence issues between her and father. A 2017 permanency planning order (PPO) identified adoption as the permanent plans for the children and not reunification with mother, which had been the permanent plan. The order included findings about the long and continuing history of domestic violence between mother and father. Mother preserved her right to appeal the PPO. A TPR was filed and mother’s rights were terminated by order dated June 27, 2018. One of the grounds the court concluded existed is the “dependency” ground under G.S. 7B-1111(a)(6). Mother appealed both the TPR (adjudication only) and PPO “ceasing reunification efforts.” Sl. Op. at 4.
- **TPR**
 - The standard of review of the adjudication phase of a TPR is whether the findings of fact are supported by clear and convincing evidence and whether the findings support the conclusion of law. Conclusions of law are reviewed de novo.
 - G.S. 7B-1111(a)(6) requires that the parent be incapable of providing proper care and supervision for the juvenile such that the juvenile is dependent under G.S. 7B-101 and there is a reasonable probability the incapability will continue for the foreseeable future. There is clear and convincing evidence, via testimony, mother’s previous statements and stipulations, and a comprehensive mental health assessment and parenting evaluation, to support the court’s findings that (1) the juveniles are dependent under G.S. 7B-101; (2) mom does not have an ability to provide proper care and supervision because of her unwillingness to separate from father, minimization of domestic violence, and failure to participate in recommended family or individual counseling to address the domestic violence; and (3) given her willful failure to engage in recommended services and the continuing domestic violence, there is a reasonable probability that mom’s incapability will continue for the foreseeable future.
 - Proper care and supervision and foreseeable future. Although mother argues she and father were never ordered to not have contact with each other, that is not the question for the court. The question “is whether mother is incapable of providing for the proper care and supervision of her children, and if so, whether Mother’s incapability is reasonably probable to continue into the foreseeable future.” Sl. Op. at 12-13. Mother’s stated intent to keep father in hers and the children’s lives despite the domestic

violence she has suffered from him is clear and convincing evidence that she is incapable of providing proper care and supervision to the children, who are dependent, and that incapability will continue for the foreseeable future.

- The appeal of the PPO “ceasing reunification efforts” is moot by the subsequent TPR order. Because the findings and conclusions in the TPR order did not rely on the PPO but instead relied on testimony as well as evidence of *current conditions* and made findings and conclusions not found in the PPO, the TPR renders the appeal of the PPO moot. (emphasis added). This case is similar to *In re V.L.B.*, 164 N.C. App. 743 (2004).
 - Author’s Note: This opinion refers to the PPO “ceasing reunification efforts” but this author believes the appeal is of the elimination of a reunification as a permanent plan, which is authorized by G.S. 7B-1001(a)(5). The court of appeals has distinguished reunification efforts from reunification as a permanent plan. See *In re C.P.*, 812 S.E.2d 188 (2018).

Responsible Individuals List (RIL)

Procedural Issues

In re Duncan, Jr., ___ N.C. App. ___ (Nov. 20, 2018)

Held: Dismiss in part and affirmed in part

- Facts: After DSS determined the petitioner was a caretaker who abused a juvenile, it provided notice to the petitioner that it intended to place him on the state’s Responsible Individuals List (RIL). Petitioner requested a judicial review. He also filed a motion to dismiss/deny asserting that he is not a caretaker and a motion for jury trial. A December order denied the motion to deny/dismiss, and a January order denied the motion for a jury trial. Petitioner appeals both orders. DSS filed a motion to dismiss the appeal, arguing both orders were interlocutory and not immediately appealable.
- Motion to Dismiss: There is no right of immediate appeal to an interlocutory order denying a NC Rule of Civil Procedure 12(b)(1) or a 12(b)(6) motion to dismiss. The trial court’s denial of the motion to dismiss did not include a determination of whether petitioner was a caretaker. Petitioner is not precluded from making the argument that he is not a caretaker at the hearing for judicial review.
- Motion for Jury Trial: Although an interlocutory order, the denial of the petitioner’s motion for jury trial affects a substantial right that could be lost without immediate review. G.S. 7B-323(b) does not provide for a statutory right to a jury trial in a judicial review of a RIL placement proceeding. Like a termination of parental rights action, the judicial review of a RIL placement proceeding did not exist at common law and is therefore not subject to a constitutional right to a jury trial. Although petitioner did not preserve for appellate review the argument that the DSS action to place an individual on the RIL is similar to a common law defamation action, the court of appeals determined the argument would fail. The trial court did not err in denying the motion for jury trial.

Due Process and Timeliness of Notice

In re Willie Reggie Harris, ___ N.C. App. ___ (May 7, 2019)

Held: Affirmed

- **Facts:** In 2013, after completing an investigative assessment, DSS substantiated abuse of a 13-year-old juvenile and identified petitioner, who was a caretaker, as the responsible individual. More than 3 years later, in 2017, DSS mailed a letter notifying petitioner of its intent to place him on the Responsible Individuals List (RIL). Petitioner timely filed for judicial review. At the hearing, after the close of DSS's evidence, petitioner argued that DSS filed the notice too late for petitioner to prepare a defense and was prejudicial. The trial court concluded petitioner should not be placed on the RIL due to DSS's multi-year failure to comply with the statutory time period to serve petitioner with notice as required by G.S. 7B-320. DSS appealed.
- **Time requirements:** The specific time limits (and methods) the DSS director must comply with to initiate the inclusion of an individual's name on the RIL are established in G.S. 7B-320. They include (1) personal delivery within 5 working days of the completion of the investigative assessment or (2) if personal notice is not made within 15 days and DSS has made diligent efforts to locate the identified individual, by registered or certified mail, return receipt requested to the individual's last known address. DSS did not provide the notice within the statutory time period or within the 2-year statute of limitations that apply to misdemeanors.
- **Due Process:** Petitioner's argument and the trial court's determination did not address whether the delay was a jurisdictional defect but instead was based on due process principles. Placement on the RIL deprives an individual of their constitutional liberty interest and requires due process including the right to notice and an opportunity to be heard before such placement. *In re W.B.M.*, 202 N.C. App. 606 (2010). The 3+ year delay was prejudicial and "deprived petitioner of his ability to mount a defense to preserve his protected liberty interest." Sl. Op. at 7.

Termination of Parental Rights

UCCJEA – Modification Jurisdiction; Relocation to Another State; Exclusive Continuing Jurisdiction

In re D.A.Y., ___ N.C. App. ___ (June 18, 2019)

Held: Vacated and Remanded for Dismissal of Petition

- **Facts and Timeline:**
 - 2013: Final custody order entered in California that awarded custody to father and supervised visits to mother. This order terminated jurisdiction in a juvenile action and transferred custody jurisdiction to family court (similar to N.C.G.S. 7B-911).
 - 2016: father and child moved to Stanly County NC (and remain there) and mother temporarily moved to Nevada.
 - 2018: Mother returned to California. Sometime after her return to California, father initiated in NC a termination of parental rights (TPR) action against mother and alleged California's jurisdiction terminated when mother relocated to another state (after father and child also left California for NC). The TPR was granted.
 - Respondent mother appeals arguing the NC district court lacked subject matter jurisdiction under the UCCJEA as NC did not have modification jurisdiction.

- Standard of review: Subject matter jurisdiction cannot be consented to or waived and can be raised at any time. Whether the court lacked subject matter jurisdiction is a question of law that is reviewed de novo. “To the extent the trial court’s findings of fact refer to the legal effect of actions taken by the parties or the court in California, they are reviewed de novo as conclusions of law.” Sl. Op. 5-6.
- Modification Jurisdiction: G.S. 50A-203 governs the modification of another state’s child-custody determination and states in part that a NC court may not modify another state’s child-custody determination unless
 - the NC court has jurisdiction to make an initial determination under G.S. 50A-201(a)(1) or (a)(2) [home state or significant connection/substantial evidence] **and**
 - the other state’s court determines it no longer has exclusive continuing jurisdiction under G.S. 50A-202 or a NC court would be a more convenient forum under G.S. 50A-207 **or**
 - the NC court or other state’s court determines “the child, the child’s parents, and any other person acting as a parent *do not presently reside in the other state*.” Sl. Op. 7 (emphasis in opinion).

The first prong was satisfied as NC was the child’s home state; however, neither basis of the second prong was satisfied. The California court did not determine it no longer had exclusive, continuing jurisdiction or that NC would be a more convenient forum. There was no finding by the California or NC court that respondent mother does not presently reside in California; instead, there was a finding by the NC court that the respondent “is a citizen and resident of the State of California.” Sl. Op 9.

- Relocation to Another State: Although mother relocated to Nevada for two years, she returned to California and was a resident there before and at the time the TPR petition was filed and served. Although the Official Comment to G.S. 50A-202, the statute governing exclusive, continuing jurisdiction, states “Continuing jurisdiction is lost when the child, the child’s parents, and any person acting as a parent no longer reside in the original decree state.... Exclusive continuing jurisdiction is not reestablished if, after the child, the parents, and all persons acting as parents leave the state, the non-custodial parent returns.” Sl. Op. at 10. Since mother was presently residing in California (the original decree state) when the TPR was commenced, NC’s jurisdiction under G.S. 50A-203 requires a finding by the California court that it no longer has continuing exclusive jurisdiction.
 - Author’s Note: The opinion refers to a finding by the out-of-state court. Case law requires that an order from that out-of-state court must be obtained and included in the NC court record.

Continuance; Effective Assistance of Counsel

In re M.T.-L.Y., ___ N.C. App. ___ (May 21, 2019)

Held: Affirmed in part, vacated in part, and remanded

- Facts: DSS filed a TPR motion in an underlying neglect action after the first permanency planning order ceased reunification efforts with mother and entered a primary permanent plan of adoption and secondary plan of guardianship. Although mother was present at the TPR hearing, her attorney moved to continue the TPR hearing on the basis that she had little contact with

mother before the hearing date. The motion to continue was denied. After a hearing, the court granted the TPR. Mother appeals arguing the denial of the motion to continue violated her constitutional right to effective assistance of counsel as she was not able to have sufficient in-person communication to prepare.

- Continuance and Effective Assistance of Counsel: The appellate court reviews a decision on a motion to continue for an abuse of discretion. If the denial of a motion to continue involves the right to effective assistance of counsel, it is a reviewable question of law, which is reviewed de novo. Parents have a right to effective assistance of counsel in a TPR proceeding, which includes adequate time for the client and counsel to prepare a defense. Prejudice is presumed when a continuance that is essential to allow for adequate time to prepare for trial is denied; however, a court does not err in denying the motion to continue when the lack of preparation results from a party's own action. Mother's attorney was the same attorney who had been representing her for a year in the neglect action. They had effectively communicated by alternative means including email, phone, and text. There was three months between the motion and hearing to prepare. Mother was not deprived of effective assistance of counsel and there was no error in denying the motion to continue.

Ineffective Assistance of Counsel; Insufficient Record

In re C.D.H., ___ N.C. App. ___ (June 4, 2019)

Held: Remand for further proceedings

- Facts: DSS filed a motion to terminate mother's parental rights as part of an underlying neglect case. In the neglect case, mother appeared at a continued nonsecure custody hearing in September 2016. Mother did not attend any other hearing in the action, including at adjudication, disposition, review, permanency planning, and TPR. Mother was represented by the same counsel, who did appear at the hearings. In the review and permanency planning orders, the court made findings about mother's visitation, although inconsistently, with the child; partial participation in and compliance with her case plan; and maintenance (for the most part) of communication with the court, DSS, and GAL. At the February 2018 TPR hearing, mother's attorney did not (1) advise the trial court of any attempts to contact mother, (2) move to continue the hearing, (3) make objections or cross-examine witnesses, or (4) present evidence or arguments on mother's behalf. After the TPR was granted, mother appealed raising as the sole issue ineffective assistance of counsel.
- Standard of Review: "Respondent must show: (1) her counsel's performance was deficient or fell below an objective standard of reasonableness; and (2) her attorney's performance was so deficient she was denied a fair hearing." Sl. Op. at 6 (citation omitted).
- Statutory Right to Counsel: "When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures." Sl. Op. at 5 (citations omitted). For indigent parents, that includes a statutory right to counsel, unless waived, and effective assistance of a counsel.
- Insufficient Record on Appeal: The record on appeal is silent as to why counsel acted as she did. "Counsel's failure to advocate for mother is not necessarily an indication of ineffective assistance of counsel." Sl. Op. at 8. Neither the court nor counsel addressed on the record (there may have been a discussion off the record) why mother was absent. The record shows very

limited evidence of mother's relationship with her counsel, who she was represented by at previous hearings, and reasons for mother's absence from the hearings even though she has some engagement with the child and DSS outside of court.

- Waive Right to Effective Assistance of Counsel: Mother may have waived her right to effective assistance of counsel based on her own actions – her failure to attend any court hearing other than the one hearing on the need for nonsecure custody. There may be other reasons for counsel's lack of advocacy. The record is insufficient. The appellate court will not speculate.
- The appropriate remedy is remand for the trial court to determine whether mother was denied effective assistance of counsel. The court should inquire into what efforts counsel made to contact and adequately represent mother at the hearing; if necessary, make a prejudice determination (was mother deprived of a fair hearing); and determine whether respondent is entitled to appointed counsel in a new TPR hearing.

In re A.R.C., ___ N.C. App. ___ (June 4, 2019)

Held: Remanded for further proceedings

- Facts: In 2016, mother's 4 children were adjudicated neglected. In February 2017, DSS filed a TPR petition for all 4 children. After a hearing in November 2017, mother was appointed a Rule 17 guardian ad litem (GAL) based on incompetency. Mother's GAL and attorney were notified of the TPR hearing, scheduled in March 2018. Mother had been hospitalized for mental health treatment. At the TPR hearing, mother was not present but her GAL and attorney were. There was no inquiry as to why mother was not present. Mother's attorney filed an answer and a motion to dismiss the TPR petitions but did not object to any evidence, cross-examine witnesses, or present evidence or arguments. Mother's rights to her children were terminated and she appealed.
- Standard of Review: "Respondent must show: (1) her counsel's performance was deficient or fell below an objective standard of reasonableness; and (2) her attorney's performance was so deficient she was denied a fair hearing." Sl. Op. at 4-5 (citation omitted).
- Right to Counsel: "When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures," which includes a statutory right to counsel and effective assistance of a counsel. Sl. Op. at 4 (citations omitted).
- Insufficient Record on Appeal: The record shows mother's absence was noted but the reasons for it were not discussed. In the period between mother's appearance at the hearing re: her competency/need for a GAL and the TPR hearing, mother was hospitalized, and this period is of particular concern. The appellate court cannot determine why mother was not present at or what her condition was at the time of the TPR hearing. There is limited evidence of mother's relationship with her attorney or GAL re: contact with them or instructions she gave them about her case. Nothing explains the discrepancy between mother's attorney's filing of an answer and motion to dismiss and lack of advocacy for mother during the actual hearing. Without knowing the reason, the appellate court cannot determine if the attorney's performance was deficient. The appellate court will not speculate.
- The appropriate remedy is remand for the trial court to find those facts and make a determination of the adequacy of the attorney representation. The trial court should inquire "into efforts by [Mother's] counsel to contact and adequately represent [her] at the termination

of parental rights hearing' and determine 'whether [she] is entitled to appointment of counsel in a new termination of parental rights proceeding.' " Sl. Op. at 8 (citations omitted). If a prejudice determination is necessary, the trial court, after having all the facts, should determine whether mother was deprived of a fair hearing.

Insufficient notice, evidence, and findings

In re L.S., ___ N.C. App. ___ (Dec. 4, 2018)

Held: Reversed

- **Facts:** In 2015, two children were adjudicated dependent. In the dependency case, respondent father agreed to an out-of-home services agreement to address substance abuse, mental health, and domestic violence issues. After the primary permanent plan of adoption was ordered in 2017, DSS initiated a TPR against both parents. Regarding respondent father, the court terminated his parental rights based upon G.S. 7B-1111(a)(2) (failure to make reasonable progress) and 7B-1111(a)(5) (failure to legitimate children born out of wedlock). Respondent father appeals.
- **Insufficient Notice Pleading:** A TPR petition must state "facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exists." Sl. Op. at 8 (citations omitted). Although factual allegations are not required to be exhaustive, "they must put a party on notice as to what acts, omissions or conditions are at issue." *Id.* Neither the body of the TPR petition nor the incorporated affidavit of the DSS social worker (which is an account of DSS's efforts provided to the father) refer to the father's willful failure to make reasonable progress. The TPR petition did not provide insufficient notice to respondent father of this TPR ground.
- **Insufficient Evidence:** A TPR based upon G.S. 7B-1111(a)(5) (failure to legitimate) requires that the petitioner prove and the trial court find by clear, cogent, and convincing evidence that (1) before the TPR petition was filed, (2) the father of a child born out of wedlock failed to take each of the enumerated actions. The findings of fact were not based on clear, cogent, and convincing evidence. DSS did not present any evidence that the children were born out of wedlock or that respondent father failed, prior to the filing of the TPR petition, to take actions specified in G.S. 7B-1111(a)(5)a., b., c., and e.

In re J.M.K., ___ N.C. App. ___ (Sept. 4, 2018)

Held: Reversed

- **Facts:** The case involves a private termination of parental rights action initiated by the mother against the father. The petition alleged failure to pay child support and failure to legitimate, G.S. 7B-1111(a)(4) & (5) as grounds. Respondent father's rights were terminated on the grounds of abandonment, failure to pay child support, and failure to legitimate, and he appeals.
- **Standard of review** is whether clear, cogent, and convincing evidence supports the findings of fact, and whether the findings of fact support the conclusion of law adjudicating the ground to TPR. The findings and conclusions must "reveal the reasoning which led to the court's ultimate decision." Sl. Op. at 3.

- Regarding the abandonment ground, the petition neither alleged nor put the respondent father on notice that his parental rights were subject to termination due to abandonment. As a result, the adjudication of abandonment must be reversed.
- In a TPR based on failure to pay child support, the “petitioner must prove the existence of a support order that was enforceable during the year before the termination petition was filed.” Sl. Op. at 5 (citations omitted). There was no evidence of a child support order.
- A court may terminate a father’s parental rights to a child born out of wedlock when the father, prior to the filing of the TPR petition (or motion) fails to take any of the enumerated actions set forth in G.S. 7B-1111(a)(5). The trial court must make specific findings of fact for each of the 5 subsections. Here, the trial court only made findings addressing subsections (a), (c), and (d) and did not address subsections (b) (legitimate the child through G.S. 49-10 or -12.1) and (e) (“establish paternity” through one of the designated statutes or other judicial proceeding).

Insufficient Notice Pleading and Findings, Abandonment, Failure to Pay Child Support

In re I.R.L., ___ N.C. App. ___ (Jan. 15, 2019)

Held: reversed in part, vacated and remanded in part

- Facts: I.R.L. was born in 2014. Mother and father lived with I.R.L. for 3 months in 2015 until mother and child moved out of the home. In April 2016, mother obtained a one-year DVPO against father, which prohibited contact with mother but did not forbid contact with any minor child residing with mother. On March 20, 2017, one month before the DVPO expired, father filed a complaint for visitation with I.R.L. and mother filed a TPR petition against father alleging father had not contacted or seen I.R.L. and had not paid any financial support since 2015. The TPR was granted on the grounds of failing to pay child support and abandonment. Father appeals.
- G.S. 7B-1111(a)(7) requires that the parent has willfully abandoned the child for at least 6 consecutive months immediately preceding the filing of the TPR petition. During the relevant time period, Sept. 20, 2016 to Mar. 20, 2017, the court found (1) the father had not seen the child, inquired about the child, or provided substantial financial support for the child, (2) there was a DVPO against father for one year, and (3) father filed for visitation on Mar. 20, 2017. There were no findings addressing the willfulness of father’s conduct, which is a required element of the ground. Because of the DVPO, the willfulness finding was especially important since any communication, gifts, or requests to visit the 3-year-old child would have had to been directed to mother, who father was specifically prohibited from contacting. The findings were inadequate to support the conclusion that father willfully abandoned the child. Vacated and remanded to make appropriate findings.
- G.S. 7B-1111(a)(4) requires the parent has willfully failed to pay child support as required by a decree or custody agreement for one year or more preceding the filing of a TPR petition. The “petitioner must prove the existence of a support order that was enforceable during the year before the termination petition was filed.” Sl. Op. at 7. Although there was testimony of a December 2014 child support order for \$50/month, the TPR order does not include findings indicating there was such an order. The findings are insufficient to support the conclusion of law. Further, the petition did not provide sufficient notice to father of the failure to pay child support ground when it alleged father “has failed to provide substantial support or consistent

care for the minor child.” This allegation “may be an assertion under a ground of abandonment” and is insufficient to father on notice of the TPR ground under G.S. 7B-1111(a)(4). Sl. Op. at 8. There was no allegation of a willful failure to pay support as required by an order or separation agreement or reference to G.S. 7B-1111(a)(4). Reversed.

Adjudication: Abandonment

In re C.K.C., ___ N.C. App. ___ (Dec. 28, 2018)

Held: reversed

- Facts: In 2014, grandmother (and petitioner in this TPR) initiated a G.S. Chapter 50 custody action and obtained an ex parte emergency custody order of the two children. In 2016, a consent order was entered in the Chapter 50 action that awarded (1) grandmother with joint legal custody of the two children and primary physical custody, (2) grandfather and his wife with joint legal custody and secondary physical custody with visitation, and (3) the termination of father’s child support order and no visitation with father. The consent order provided that grandmother will file an action to terminate respondent father’s parental rights, which no party will oppose. In October 2017, respondent father filed a motion to modify the Chapter 50 consent order alleging a substantial change in circumstances and seeking sole custody. In November 2017, grandmother filed a TPR petition alleging neglect and abandonment under G.S. 7B-1111(a)(1) & (7), which was granted in March 2018. Respondent father appeals the TPR, challenging both grounds.
- The standard of review for a ground to TPR is whether there is clear, cogent, and convincing evidence to support the findings of fact and whether the findings of fact support the conclusions of law. The conclusion of law is reviewed de novo.
- “Abandonment implies conduct on the part of the parent which manifests a willful determination to forego all parental duties and relinquish all parental claims to the child.” Sl. Op. at 4 (citation omitted). Willfulness is more than intention; it has purpose and deliberation. Willful abandonment is more than a parent’s failure to live up to his parental obligations; “findings must clearly show that the parent’s actions are wholly inconsistent with a desire to maintain custody.” Sl. Op. at 5. Willfulness is a question of fact.
- Willful abandonment under G.S. 7B-1111(a)(7) involves the six consecutive months immediately preceding the filing of the TPR petition, although the court may consider the parent’s conduct outside of this determinative time period when evaluating a parent’s credibility and intentions. During the six month relevant time period, respondent father filed a motion to modify the Chapter 50 consent order seeking sole custody, which demonstrates that he did not intend to forego all parental duties and relinquish all parental rights to the children. Neglect under G.S. 7B-1111(a)(1) includes a juvenile who has been abandoned (as defined by G.S. 7B-101(15)). The finding of neglect must be based on evidence that shows neglect at the time of the termination hearing. Respondent father’s attempt to regain custody of his children precludes the court’s determination that respondent-father neglected the children through abandonment.
- “The consent order, as construed by the trial court, is void as against public policy, insofar as it constitutes an agreement that Respondent-father’s parental rights should be terminated or that Respondent-father relinquished his parental rights...” Sl. Op. at 7. There was not a properly

executed consent or relinquishment for adoption, and a TPR requires the statutory process of a two-step process involving an adjudicatory and dispositional stage. *See In re Jurga*, 123 N.C. App. 91 (1996); *Foy v. Foy*, 57 N.C. App. 128 (1982).

Disposition- Best Interests Findings

In re T.H., ___ N.C. App. ___ (June 18, 2019)

Held: Affirmed

- **Facts:** This TPR arises from an underlying action where the two children were adjudicated neglected and dependent related to their parents' substance use, mental health issues, and criminal charges. The TPR was granted on the grounds of neglect and willful failure to make reasonable progress to correct the conditions that led to the children's removal. Respondent mother appeals the disposition only, which concluded that the TPR is in the children's best interests.
- **Best Interests and Standard of Review:** After an adjudication of at least one ground to terminate parental rights, the court proceeds to disposition, which is based on whether the TPR is in the child's best interests by considering factors in G.S. 7B-1110. The standard of review is an abuse of discretion, which is when "the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." Sl. Op. 5. Here, there was no abuse of discretion as the court's order reflects it properly considered the required factors and made a reasoned best interests determination.
- **Best Interests Findings:**
 - Findings under G.S. 7B-906.2(b) addressing reunification efforts apply to permanency planning hearings and not termination of parental rights proceedings, which are governed by Article 11 of G.S. Chapter 7B. The finding that the TPR is necessary to accomplish the best permanent plan of adoption satisfies G.S. 7B-1110(a)(3).
 - When considering any other relevant factor (G.S. 7B-1110(a)(6)), the trial court exercised its discretion when determining the mother's claim of recent sobriety was outweighed by her years of unaddressed substance use as it is "the trial judge's duty to weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefore." Sl. Op. at 7. Additionally, G.S. 7B-1110 does not require the court to make findings on all of the evidence presented but instead requires written findings of relevant factors. "A factor is relevant if there is conflicting evidence concerning the factor that is placed in issue." Sl. Op. at 9. Without conflicting evidence concerning DSS's efforts to contact mother while she was incarcerated, no findings were required.

Appeal: No Merit Brief; Rule 3.1

In re T.H., ___ N.C. App. ___ (June 18, 2019)

Held: Affirmed

- **Facts:** Respondent father appeals the TPR ground of neglect. His counsel filed a "no-merit" brief under App. Rule 3.1(e) and requested the appellate court conduct an independent review.

Respondent father did not file his own brief. The appellate court exercised its discretion under App. Rule 2 to consider issues that were not raised in the briefs and found no prejudicial error.

- Anders-type Review: There is no statutory or constitutional right to an independent review by the appellate court when no issue has been brought to the court's attention. App. Rule 3.1(e) does not include the same Anders requirements that are established by the U.S. Supreme Court for criminal appeals. A TPR is not criminal in nature, triggering the requirements of Anders. Although parents have a statutory right to counsel in a TPR, there is no statutory right to the Anders procedures. Until the General Assembly or N.C. Supreme Court (by rule or holding) creates the right to an Anders-type review of issues that are not raised by the parties or their counsel, App. Rule 28 limits the right of review to issues actually raised in the briefs.
 - Author's Note: The NC Supreme Court heard arguments on May 28, 2019 on this issue in another matter, *In re L.E.M.*, 820 S.E.2d 577 (2018).

In re I.B., ___ N.C. App. ___ (Nov. 20, 2018)

Held: Affirmed

- Facts: Respondent mother's parental rights were terminated. In compliance with NC Appellate Rule 3.1(d), her attorney filed a no merit brief and notified respondent mother of her right to file a pro se brief. No pro se brief was filed. The court of appeals conducted an independent review of the appellate record.
- Anders vs. App. Rule 3.1(d): Through the enactment of NC Appellate Rule 3.1(d), the NC Supreme Court created an *Anders*-like process for juvenile cases. *See Anders v. State of California*, 386 U.S. 738 (1967). App. Rule 3.1(d) does not include all the procedures of the *Anders* process. Specifically excluded from Rule 3.1(d) are the requirements under *Anders* that (1) appellant's counsel moves to withdraw from the representation and (2) the appellate court conducts an independent review of the record to confirm whether the appeal is frivolous before granting the motion to withdraw and dismissing the appeal. Under *Anders*, if the appellate court determines the appeal is not frivolous, it either denies the attorney's motion to withdraw or grants it and appoints a new attorney and orders the attorney to file a brief on the merits. Under App. Rule 3.1(d), counsel does not seek to withdraw. The attorney may continue to advise the client on procedural and substantive matters, which assures the client will be able to file a pro se brief that raises the arguments the client wants the appellate court to review. The appellate court can then adjudicate the appeal of issues raised in the briefs. When interpreting the procedural rule, the appellate court looks to the text, which here is plain and unambiguous. The language of App. Rule 3.1(d) does not require the appellate court to conduct an independent review of the record. Although not required, the court of appeals has discretion to review conduct the review where appropriate.

In re D.A., ___ N.C. App. ___ (Oct. 16, 2018)

Held: Dismissed

- When respondent-counsel complies with App. Rule 3.1(d) by filing a no-merit brief and notifying the client, in this case respondent-mother, of her right to file a pro se brief, and respondent-mother fails to file a pro se brief, no issues have been argued or preserved for appellate review. Citing *In re L.V.*, 814 S.E.2d 929 (2018).

- When respondent-counsel files a no-merit brief pursuant to App. Rule 3.1(d) but is unable to comply with the requirements of the rule regarding sending notice to the client (in this case respondent-father) of the no-merit brief, record, transcript, and right to file a pro se brief after making diligent efforts to do so, the appellate court may invoke App. Rule 2 to “expedite a decision in public interest” and suspend the portion of App. Rule 3.1(d) that mandates service on the client. Where the respondent father failed to communicate his present address to counsel, the appellate court must make a case-by-case consideration when applying App. Rule 2. In this case, appellate counsel made an exhaustive effort to serve his client, who at trial refused to disclose his address, and App. Rule 2 was invoked. The respondent father failed to file a pro se brief to argue or preserve issues for appellate review.

In re L.E.M., ___ N.C. App. ___ (Oct. 2, 2018)

Held: Dismiss Appeal

There is a dissent and a concurrence in result only

- Facts: The trial court granted the petition to terminate respondent father’s parental rights, which was initiated by DSS who had custody of the child pursuant to a neglect and dependency action. The TPR was based on the grounds of neglect and failure to make reasonable progress to correct the conditions that led to the child’s removal. G.S. 7B-1111(a)(1)–(2). Respondent father timely appealed. Respondent father’s counsel filed a no merit brief and requested the appellate court conduct an independent review of the case pursuant to Appellate Rule 3.1(d). Counsel also notified respondent father of his right to file his own arguments directly with the court of appeals, but he did not do so.
- Opinion: By appellant’s failure to file written arguments (a pro se brief) with the appellate court, “no issues have been argued or preserved for review in accordance with our Rules of Appellate Procedure.” Sl. Op. at 6 quoting *In re L.V.*, ___ N.C. App. ___ (July 3, 2018). Being bound by precedent, respondent’s appeal must be dismissed.
- Concurrence: Although the court is bound by *In re L.V.*, “I believe [it] erroneously altered the jurisprudence of cases arising under [App.] Rule 3.1.... [and] significantly impacts the constitutional rights of North Carolinians... whose fundamental right to a parental relationship with his child should only be terminated as contemplated by law.” Sl. Op. concurrence at 1. No merit briefs arise from *Anders v. California*, 386 U.S. 738 (1967), which applies to criminal cases. Although the court of appeals held that *Anders* procedures involving a full examination of the proceeding by the appellate court to determine whether the case is wholly frivolous do not apply to TPR cases (*In re N.B.*, 183 N.C. App. 114 (2007)), the N.C. Supreme Court then adopted App. Rule 3.1(d). The rule allows for no merit briefs and an *Anders*-like procedure in appeals of juvenile orders, including a TPR. See G.S. 7B-1001. Although App. Rule 3.1(d) authorizes the parent to file a pro se brief, it does not appear to require a parent to file such a brief for appellate review. Rather than address previous case law that consistently conducted *Anders*-type reviews under Rule 3.1(d), the holding in *In re L.V.* was supported by dicta, which is not controlling authority, in a concurrence, which is not binding on the court, and “I believe *In re L.V.* is an anomaly in our case law that must be corrected....” Sl. Op. concurrence at 5.
- Dissent: Adopting the analysis of the concurrence, the dissent disagrees with the conclusion that the court is bound by *In re L.V.* because it is contrary to settled law established in prior opinions

that continue to be controlling. App. Rule 3.1 requires appellate counsel to file an appellate brief that includes issues that might support the appeal and state why those issues are without merit or would not change the result, the purpose of which seems to be to allow the counsel to request a review by the appellate court for potential error that counsel has not identified.

In re I.P., ___ N.C. App. ___ (Oct. 2, 2018)

Held: Dismiss Appeal

There is a dissent and a concurrence in result only, both of which are discussed in *In re L.E.M.*, which was filed concurrently with this opinion.

- Respondent father’s counsel filed a no merit brief under Appellate Rule 3.1(d) for an order that terminated father’s parental rights on five different grounds, noting there was no error on the ground of neglect and no abuse of discretion in determining the TPR was in the child’s best interest. Counsel complied with the requirements of Rule 3.1(d), including notifying respondent father of his right to file a pro se brief. Counsel filed a motion requesting an extension of time for respondent father to file a pro se brief, which was granted. Respondent father filed his brief late, appears to request the appeal be held in abeyance (which was denied), and argues a “bare assertion of error unsupported by citation to any record evidence or legal authority” and is therefore abandoned. Sl. Op. at 8. See *In re C.D.A.W.*, 175 N.C. App. 680 (2006); App. Rule 28(b)(6). Respondent father’s arguments are untimely and not properly before the court as they are unsupported allegations of error. Citing *In re L.V.*, ___ N.C. App. ___ (July 3, 2018), the appeal must be dismissed as no issues have been argued or preserved for appellate review.

Civil Opinions Related to Child Welfare

Reporting Requirements

Rouse v. Forsyth County DSS, ___ N.C. App. ___ (Nov. 6, 2018)

Held: Affirmed in part; vacated in part

- This is an employment case involving the discharge of a Senior Social Worker in the Family and Children’s Division After Hours Unit at Forsyth County DSS. One of the issues addressed in this opinion discusses mandated reporting under G.S. 7B-301.
- Facts: The social worker provided “supportive counseling” (a Forsyth County DSS policy that supplemented the state’s screen in and screen out policy regarding a report of abuse, neglect, or dependency) to a homeless father and son to assist the father in finding temporary housing for his 12-year-old son. In providing “supportive counseling,” the social worker spoke with the son’s mother to see if the son could stay with her. During that conversation, the mother gave various reasons why the son could not stay with her, one of which she blurted out “he [the son] molested my daughters.” The social worker asked follow up questions of the mother who immediately recanted. The social worker also questioned the father and son both of whom denied the recanted allegation. Ultimately, the mother agreed to allow the son to stay with her starting the next night. The social worker did not document the allegation or treat it as a report of abuse but instead documented her provision of supportive counseling and the efforts made on behalf of the father and son. Weeks later, Forsyth County DSS was contacted by another county DSS about the same family and an allegation of child-on-child sexual misconduct.

Afterwards, the social worker was discharged from her employment, which she successfully appealed before an administrative law judge (ALJ). Forsyth County DSS appealed the ALJ decision, arguing in part that the social worker's failure to generate a CPS report under G.S. 7B-301(a) after interviewing the father, son, and mother was grossly inefficient job performance constituting just cause for dismissal.

- Discussion of reporting requirements: Evidence (specifically the social worker's testimony) supported the finding of fact that the social worker treated the meeting with the family as a "general inquiry" about foster care since no party made a report and she had no independent cause to suspect abuse of child. Sl. Op. at 15. A violation of G.S. 7B-301, which requires a report by a person who has cause to suspect a child is abused, neglect, or dependent, was not established by the greater weight of the evidence. "Cause to suspect" has not been defined by the courts; however, "the standard is not just a suspicion.... a person deciding whether to make a report also must consider a child's statements, appearances, or behavior (or other objective indicators) in light of the context; the person's experience; and other available information." Sl. Op. at 18-19 quoting Janet Mason, *Reporting Child Abuse and Neglect in North Carolina* 67 (3rd ed. 2013). The social worker testified that based on the context of the statements, her experience, and her observation and interaction with the son, she had no cause to suspect abuse. Respondent failed to prove the social worker had cause to suspect and knowingly failed to make a report in violation of G.S. 7B-301. The social worker performed her job requirements regarding the "supporting counseling" practice utilized by Forsyth County DSS.

Effect of TPR on Grandparent Visitation

Adams v. Langdon v. Malone, ___ N.C. App. ___ (March 19, 2019)

Held: Reversed and remanded

- Relevant Facts: Father filed a child custody action against mother. In 2011, father obtained a temporary custody order granting him primary custody of their child. In 2012, maternal grandmother filed a motion to intervene in the custody dispute, which was granted. Also in 2012, a permanent custody order was entered that provided sole custody to father, visitation of one weekend/month plus one additional Saturday/month with grandmother, and no visitation with mother. In Sept. 2017 in a separate termination of parental rights (TPR) action initiated by father, mother's parental rights were terminated. In Nov. 2017, grandmother/intervenor filed a show case motion for visitation in the custody action. In 2018, the trial court ruled the custody action did not survive the TPR and grandmother's visitation rights terminated with the termination of mother's parental rights. Grandmother appealed that order. (Note, grandmother appealed another order in the custody action that is not addressed in this summary).
- Grandmother's visitation rights were not extinguished by the termination of mother's parental rights. In 2012, prior to the TPR, grandmother intervened and obtained an order giving her visitation rights in the parent's ongoing custody dispute. Because she became a party to a custody proceeding, "the court has the ability to award or modify visitation even if no ongoing custody dispute exists between the parents at the time." Sl. at 11 quoting *Quisinberry v. Quisinberry*, 196 N.C. App. 118, 122 (2009). Once grandmother became a party, she is a party for all purposes. This is similar to the situation in *Sloan v. Sloan*, 164 N.C.

App. 190 (2004). After the unexpected death of the child's father, the court retained jurisdiction of the custody action between the parents and permitted the paternal grandparents to intervene and seek a modification and enforcement of the custody order that was entered in that action prior to the father's death that awarded them telephonic visits with their grandchild. Here, the intervenor's visitation rights exist independently of the mother's parental and custodial rights such that she could seek to enforce through rights through contempt proceedings.

Service by Publication: Due Diligence

Henry v. Morgan, ___ N.C. App. ___ (March 19, 2019)

Held: Affirmed (defendant's motion to dismiss)

- "When a plaintiff's attempts to find and serve a defendant do not meet the due diligence standard described in Rule 4(j1) of the North Carolina Rules of Civil Procedure, service by process of publication is improper and dismissal is appropriate." Sl. Op. at 1.
- The exercise of due diligence to locate and serve defendant is a conclusion of law that is reviewed de novo. Due diligence does not involve a "restrictive mandatory checklist" but does require the plaintiff to "use all resources reasonably available to her in attempting to locate defendants." Sl. Op. at 4-5. It is examined on a case-by-case basis. The focus is not on what plaintiff did not do but on what plaintiff did do. Here, Plaintiff's attempts to serve defendant at one address where defendant did not reside and one general google search was insufficient when readily available resources were left unexplored, such as a DMV or public records search (Defendant's driver's license states his correct address) or request of defendant's attorney for defendant's address or whether he would accept service.

Criminal Opinions Related to Child Welfare

Evidence of Prior Acts: Rules 404 and 403

State v. Godfrey, ___ N.C. App. ___ (Dec. 18, 2018)

Held: No Error

- Facts: Defendant appeals his conviction of a first-degree sex offense with a child, arguing the trial court erred in admitting evidence of prior bad acts. The conviction is based on an incident that occurred in May 2004, when the victim was 12 years old, although she did not report the crime until 2016. In the "May 2004" incident for which Defendant was charged, the victim testified that when she was staying at the defendant's home, he pulled her into the laundry room, removed her pants and underwear, and digitally penetrated her vagina with his middle finger until she freaked out and ran away. The victim testified to two other incidents that Defendant was not charged with: (1) the "bed incident," which occurred a month or two before the May 2004 incident when the victim was staying at Defendant's home, and where Defendant crawled into bed with the victim and digitally penetrated her vagina with his middle finger until she freaked out and ran away, and (2) the "Lick Mountain" incident, when the victim was staying at Defendant's place two or three years before the May 2004 incident, and where Defendant while wrestling with victim, carried her to his bed and digitally penetrated her vagina with his

middle finger. The trial court permitted the testimony of prior acts for the purpose of showing a “common plan or scheme” to digitally penetrate the victim under Rule of Evidence 404(b) and determining the testimony was more probative than prejudicial under Rule 403.

- The standard of review of a trial court’s Rule 403 determination is an abuse of discretion. The appellate court reviews de novo the legal conclusion that evidence is/is not covered by Rule 404(b).
- Rule 404 limits the introduction of character evidence but allows evidence of other crimes, wrongs, or acts to show a person acted in conformity therewith when the evidence is relevant to a fact or issue and is not for the purpose of showing defendant has the propensity to commit an offense of the nature of the crime charge. Evidence of a similar sex offense involving the same victim as the victim of the crime for which defendant is on trial is often viewed as showing Defendant’s “common scheme or plan” to sexually abuse the victim. The evidence may be excluded under Rule 403 when its probative value is outweighed by unfair prejudice. “When prior incidents are offered for a proper purpose, the ultimate test of admissibility is whether they are sufficiently similar and not so remote as to run afoul of the balancing test between probative value and prejudicial effect set out in Rule 403.” Sl. Op. at 10 (citation omitted). Here, the three incidents involved the same type of sexual act involving penetration, however, slight, by an object (the defendant’s middle finger) into a genital opening of a person’s body (the victim’s vagina). Additionally, all three incidents occurred while the victim was staying with the Defendant. Each incident involved the same victim, same mode of penetration, and same circumstance and were sufficiently similar to show a common scheme or plan by Defendant to digitally penetrate the victim while she was under his control. Although the Lick Mountain incident was two or three years earlier, the time period does not inherently render the evidence of this prior act so remote as to eliminate its probative value given its striking similarity to the other incidents. There was no abuse of discretion in admitting the testimony regarding both prior acts.

House Bill 301/Session Law 2019-33
An Act to make revisions to the Juvenile Code pursuant to recommendations
by the Court Improvement Program (CIP)

SECTION 1.

Amends G.S. 7B-101

Expands the definition of responsible individual to include an individual responsible for subjecting a juvenile to human trafficking, sexual servitude, or involuntary servitude, regardless of whether they are parents, guardians, custodians or caretakers. This change comports with changes made to the definition of abused juvenile that went into effect October 1, 2018 and December 1, 2018.

SECTION 2.

Amends G.S. 7B-200

G.S. 7B-200 currently provides for an automatic stay of civil custody actions involving juveniles when an abuse, neglect or dependency (A/N/D) petition is filed. Prior to this amendment, there was no requirement to notify the parties in the stayed action that their action had been stayed. This section adds a requirement for a notice to be placed in the stayed action, if information about the stayed action is made known to the A/N/D court. This amendment requires the creation and use of a new AOC form for the notice.

SECTION 3.

Amends G.S. 7B-320

Amends G.S. 7B-320(a) to require the DSS director to attempt personal delivery of the written notification to the responsible individual in an “expeditious manner” rather than within “5 working days.” (There are no changes to subsection (b) which requires the DSS director to attempt personal delivery for 15 days before using other delivery methods.)

SECTION 4.

Amends G.S. 7B-323

This section amends G.S. 7B-323 to clarify the types of evidence a court may allow to be admitted during a responsible individuals list (RIL) hearing. This change clarifies that courts may permit the admission of relevant and reliable evidence including but not limited to child medical evaluation reports and child and family evaluation reports that a director relied upon to make a determination that abuse or serious neglect occurred. This section also allows law enforcement officers who are investigating the same allegations that led the DSS director to determine that the person was responsible for abuse or serious neglect to attend closed RIL hearings.

SECTION 5.

Amends G.S. 7B-324

This section amends G.S. 7B-324 so that a person identified as a responsible individual is not eligible for judicial review if, prior to the hearing on the petition for judicial review, the person is convicted of a crime that resulted from the same incident that led to identification of the person as a responsible individual.

SECTION 6.

G.S. 7B-503(a)(2)

This section adds “serious emotional damage” as it is defined within the definition of abused juvenile in G.S. 7B-101(e) as an additional ground for nonsecure custody. As per G.S. 7B-101(e), “serious emotional damage is evidenced by a juvenile’s severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others.”

SECTION 7.(a)

Amends G.S. 7B-600(c)

This section amends G.S. 7B-600 to allow a court to find that a prospective guardian’s provision of a stable placement for a juvenile for six consecutive months is evidence that the prospective guardian has adequate resources “to appropriately care for the juvenile.”

SECTION 7.(b)

Amends G.S. 7B-903(a)(4)

This section amends 7B-903(a)(4) to allow a court to find that a prospective custodian’s provision of a stable placement for a juvenile for six consecutive months is evidence that the prospective custodian has adequate resources “to appropriately care for the juvenile.”

SECTION 8.

Amends G.S. 7B-901(c)(2) and (d)

The amendment to 7B-901(c)(2) clarifies that a court may not terminate the parental rights of a parent to one juvenile and simultaneously use that termination to cease reasonable efforts for reunification in an initial disposition hearing for a sibling of that juvenile.

The amendment to G.S. 7B-901(d) clarifies that the court shall conduct a permanency planning hearing within 30 days when a court determines that reunification efforts are not required at the initial disposition.

SECTION 9.

Amends G.S. 7B-905.1(a) and (b)

The amendment to 7B-905.1(a) clarifies that when a court order removes custody of the juvenile from a parent, guardian, or custodian or when an order continues the juvenile's placement outside of the home, a court may order that no visitation occur if it is in the juvenile's best interests consistent with the juvenile's health and safety.

The amendment to 7B-905.1(b) requires a DSS agency to request a hearing within 30 days of the director's suspension of a visitation plan, unless a review or permanency planning hearing is already scheduled to be heard within 30 days of the suspension.

SECTION 10.

Amends G.S. 7B-906.1(a), (g), (j) and (n)(1)

The amendment to G.S. 7B-906.1(a) provides that a court shall conduct ongoing review hearings as needed after the initial disposition hearing. This amendment also replaces the term "subsequent permanency planning hearing" with the term "permanency planning hearing."

The amendment to G.S. 7B-906.1(g) eliminates the requirement for the court to warn the parents, guardian, or custodian that "a failure or refusal to cooperate with the plan may result in an order" that reunification efforts shall cease.

The amendment to 7B-906.1(j) mirrors the changes in made to 7B-600(c) and 7B-903(a)(4) which appear in Sections 7.(a) and 7.(b). The amendment to 7B-906.1(j) allows a court to find that a prospective guardian's/custodian's provision of a stable placement for a juvenile for six consecutive months is evidence that the prospective guardian/custodian has adequate resources "to appropriately care for the juvenile."

The amendment to 7B-906.1(n)(1) allows a court to waive further hearings when the juvenile has resided in the placement for at least six consecutive months and the court enters a consent order pursuant to G.S. 7B-801(b1).

SECTION 11.

Amends G.S. 7B-906.2(a1), (b), (c), and (d)

The amendment to 7B-906.2(a1) provides that concurrent planning is not required when a permanent plan is achieved in the order or has been achieved in a prior order.

The amendments to 7B-906.2(b) allow reunification to be removed as a primary or secondary permanent plan at any permanency planning hearing if: 1) reasonable efforts for reunification were ceased at the initial disposition hearing, or 2) at a prior review hearing, the court found that efforts to reunite the juvenile with either parent would be unsuccessful or inconsistent with the juvenile's health or safety and need for a safe, permanent home within a reasonable

period of time, or 3) the court implements or has implemented a permanent plan or 4) the court makes written findings at the permanency planning hearing that reunification efforts clearly would be unsuccessful or inconsistent with the juvenile's health or safety.

The amendment to G.S. 7B-906.2(c) clarifies that, when reunification is a permanent plan, the court must make a finding about whether the county's reunification efforts were reasonable at each permanency planning hearing.

The amendment to G.S. 7B-906.2(d) requires the court to make written findings that demonstrate the degree of success or failure toward reunification rather than "the lack of success."

SECTION 12.

Amends G.S. 7B-908(b)(1) and (e1)

This section makes three amendments to G.S. 7B-908(b)(1). The first amendment to G.S. 7B-908(b)(1) adds the legal guardian as a person who receives notice of post-termination of parental rights (post-TPR) review hearings. The second amendment to G.S. 7B-908(b)(1) allows a juvenile of any age to participate at post-TPR review hearings. The final amendment clarifies the parties who may participate at post-TPR review hearings.

The amendment to G.S. 7B-908(e1) adds the same language that is currently found in G.S. 7B-906.1(h) and 7B-807 to require that post-TPR orders be reduced to writing, signed by the judge, and filed within 30 days of completion of the hearing and the procedure the clerk must follow when orders are not entered within 30 days.

SECTION 13.

Adds a new section G.S. 7B-909.1

This addition codifies a respondent parent's right to counsel when relinquishing his/her parental rights to DSS for the purpose of adoption. This right is addressed in *In re Maynard*, 116 N.C. App. 616, 448 S.E.2d 871 (1994).

This addition requires that before a respondent parent may execute a relinquishment, notice shall be given by "any reasonable and timely means" to the parent's retained counsel or confirmed counsel, or if they are unavailable, to a partner or employee at their law office that DSS "has made arrangements for the parent to execute a relinquishment at a specific date, time, and location." Prior to executing the relinquishment, the parent must also be advised of the right to seek advice from their attorney and the right to have their attorney present while executing the relinquishment.

SECTION 14.a

Amends G.S. 7B-1001(a) and (a1)

The amendments in Section 14.(a) create consistency in the language in used in G.S. 7B-1001(a) and (a1) regarding appeals.

SECTION 14.b

Amends G.S. 7B-1003(e)

These amendment deletes references to repealed subsections of the Juvenile Code and clarifies that G.S. 7B-903.1 will apply to any order entered during the pendency of an appeal when a juvenile is in DSS custody.

SECTION 15.a

Amends G.S. 7B-2503(1)

This section amends G.S. 7B-2503(1) to allow an attorney appointed to represent a parent whose child was removed from the parent's custody during an undisciplined juvenile disposition to be paid for representing the parent in review and permanency planning hearings under G.S. 7B-906.1.

SECTION 15.b

Amends G.S. 7B-2506(1)

This section amends G.S. 7B-2506(1) to allow an attorney appointed to represent a parent whose child was removed from the parent's custody during a delinquent juvenile disposition to be paid for representing the parent in review and permanency planning hearings under G.S. 7B-906.1.

SECTION 16.

Amends G.S. 7B-3100

This section amends G.S. 7B-3100 to permit a juvenile's guardian ad litem attorney advocate appointed in an abuse, neglect, or dependency matter to share confidential information about the juvenile with the juvenile's attorney appointed or retained pursuant to G.S. 7B-2000 for a delinquent or undisciplined juvenile.

SECTION 17.

This act becomes effective October 1, 2019.

Bringing the Data to Life: Data as a Tool for Parent Representation

- 1) Why Use Data as a Tool in Child Welfare Cases?
 - a. Data provides facts that cannot be ignored & supports our goals in parent representation
 - b. “Best interest” standard generally not supported by data
 - c. Data trends can help craft novel arguments or strategies in child welfare cases
- 2) Where to Find Child Welfare Data and Research
 - a. Adoption and Foster Care Analysis and Reporting System (AFCARS)
 - b. Child Welfare Information Gateway & Local Practitioner Listservs
 - c. State Child Welfare Agency (and oversight agency)
 - d. Google Scholar/Open Source Research (ex: ResearchGate)
- 3) Putting the Data to Work: Evidence-Based Service Planning
 - a. On average, parents are asked to complete 7.5 tasks (D’Andrade and Chambers, 2012)
 - b. Completing tasks on a service plan requires 22-26 hrs/wk (Brook and McDonald, 2007)
 - Substance abuse treatment: 9 hours per week for 6 months
 - Employment counseling/services: 5 hours per week for 6 months
 - Case management/meetings: 5 hours per week
 - Parenting classes/training: 2 hours per week
 - Other services (ie: therapy, DV counseling, etc.): 1-4 hours per week
 - c. Poorer families possess fewer material resources and social supports, experience lower quality health, education, and housing (Zilberstein, 2016)
 - Must invest more time and resources in meeting basic needs
 - Require more coping ability and diligence to overcome these additional barriers
 - d. Boilerplate services result in 35% of parents getting services for problems they don’t have (D’Andrade and Chambers, 2012)
 - 17% had SA tasks but no SA issues
 - 26% had DV tasks but no DV issues
 - 20% had MH tasks but no identified MH issues
 - e. Intensive or higher number of services does not consistently correlate with quicker reunification or lower re-entry (Brook and McDonald, 2007)
 - f. Service plan tasks are not a proxy for change (Smith and Donovan (2003)
 - g. Evidence based service planning (Berliner et al., 2015)
 - Prioritizes efficacy and efficiency: short-term, planned discontinuation
 - Focus and parsimony: smallest # of services needed, focus on skill building
 - Triage and sequencing: meet basic needs first, stepped care
 - h. How Do We Leverage the Research?
 - Change the narrative (hours) and create visuals (calendar)
 - Hire your own social work expert (services, client empowerment, etc.)
 - Be involved in the drafting of service plans
 - Reasonable efforts (≠ “everything & kitchen sink” service plan tasks) + nexus
 - Abuse of discretion motions/motions to compel
- 4) Putting the Data to Work: Parent-Child Visitation
 - a. Visitation is critical for parents to learn/practice new skills (NC CW Worker Note October 2000)
 - Typical visitation (1 hour visitation/week) is the equivalent of one full-time week at the end of the year (+/- 52 hours)
 - b. Parent-Child Contact/Visitation is linked to positive outcomes
 - Improved child well-being (Hess, 2003)

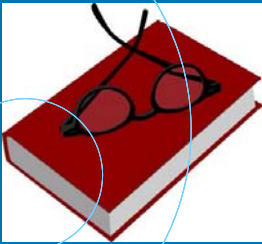
- Adjusted better to placement (Hess, 2003)
- Spent less time in out-of-home care (Hess, 2003)
- c. Parent/Child Visitation is directly linked to reunification (Davis, et. al 1996)
 - Parents who visit their kids are approximately 10x more likely to be reunified
- d. Research how other courts look at duration/frequency of visitation developmentally (ex: MA Probate Court)
 - Birth – 1 years old: At least 2-3 hours/visit with 3 visits weekly
 - 1-3 yr olds: At least 4-6 hrs/visit with 3 visits weekly
 - 3-5 yrs old: At least 4-6 hrs/visit with 2 visits weekly and 1 overnight until noon
 - 6-12 yrs old: Overnights from Thursday-Sunday & 1 overnight during work wk
 - 13-18 yrs old: Overnights from Thursday-Sunday and 1 dinner w/ overnight
- e. Research why there is a presumption that visits should be supervised
 - See Georgia Juvenile Court Dependency statute, O.C.G.A. §15-11-112 (2019)
- f. How Do We Leverage the Research?
 - Draft Motions for Parenting Time include Proposed Orders
 - Challenge standard visitation practices- unsupervised should be starting point
 - Utilize your State's Family Court (divorce) parenting time guidelines, broken down by age group, as a framework for requests and orders
 - Make Reasonable Efforts Arguments at each stage of the proceeding
 - Hire a SW/clinical expert to assist as part of your legal defense team

5) Putting the Data to Work: Racial/Ethnic Disparities

- a. Documented racial disparities at each stage in child welfare (Dettlaff et al., 2011)
 - Acceptance for investigation (Zuravin et al., 2005)
 - Substantiation of alleged maltreatment (Ards, et al., 2003)
 - Placement in out of home care (Rivaux, et al., 2008)
 - Length of time in placement/ Longer time to reunification (Hill, 2005)
- b. Racial disparities in the CW system are not due to poverty alone, but are related to caseworker assessment of risk (Dettlaff et al., 2011)
 - Race was not an explanatory factor in substantiation decisions when only poverty (family income) was analyzed (Dettlaff et al., 2011)
 - BUT when caseworker assessment of risk was added to the model, race emerged as a significant explanatory factor in substantiation decisions (Dettlaff et al., 2011)
- c. Racial disparities in the courtroom began at the very door to the courthouse (Lens, 2019)
 - Demographic divide of clients vs. legal professionals
 - Separation by space, color, and clothing
- d. Clients marginalized: rules of the adversarial process, stereotypical narratives (Lens, 2019)
 - Key interactions tinged with racial stereotypical bias
 - The silence of parent voice in the courtroom
 - The narrative of blame, shame and helplessness
 - Brief courtroom interactions are synergistic for use of stereotypes/bias
- e. How do we Leverage the Research?
 - Work with attorneys/bar to implement Judicial Benchcards (ex: NCJFCJ)
 - Change the narrative: address structural barriers, emphasize the positive, and ensure everyone has a name and a voice
 - Locate family/kinship resources AND advocate for equal service provision
 - Consider hiring investigator, reach out to local community organizations
 - File motions identifying the racial disparity & linking disparity to reasonable efforts

EFFECTIVE USE OF EXPERTS

Lyana Hunter & Alexis Perkins
Assistant Public Defenders
Wilmington, NC

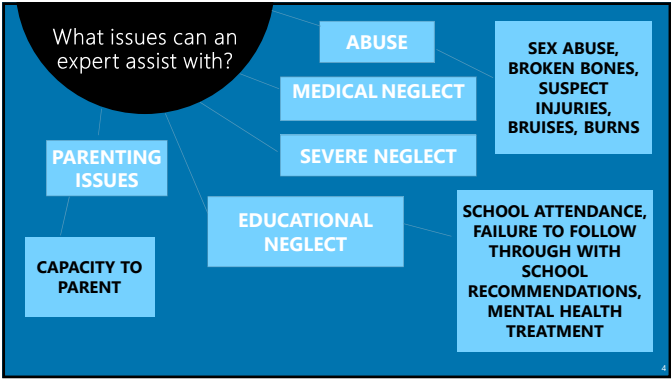




ROADMAP

- ☒ DO I NEED AN EXPERT?
- ☒ YES I DO... NOW WHAT?
- ☒ HOW TO PROCURE AN EXPERT
- ☒ WORKING WITH YOUR EXPERT – PREP PREP PREP
- ☒ WORKING WITH YOUR EXPERT – GAME TIME

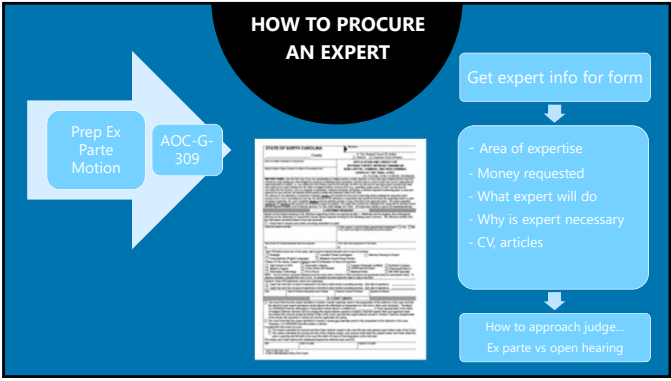




YES I DO...NOW WHAT?

FIRST STEPS – WHERE/WHO?

Independent Research	Does DSS have an expert?	Steps to Identify an expert
<ul style="list-style-type: none">GOOGLEhttps://forensicsresources.org/RESEARCH JOURNALSBOOKS – ALTERNATE EXPLANATIONS FOR COMMON INJURIESCURRENT SERVICE PROVIDERSASK COLLEAGUES	<ul style="list-style-type: none">CMEFIND SOMEONE COMPARABLEARE DSS FINDINGS ACCURATE?DSS IS NOT USING THEIR TYPICAL EXPERT – WHY?WHAT INFO DID DSS EXPERT RELY ON – DO THEY HAVE COMPLETE PICTURE	<ul style="list-style-type: none">FORMER DSS EXPERTS?CHILD'S PEDIATRICIANEXPERTS IN ACADEMIAhttps://forensicsresources.org/HOW TO VET POTENTIAL EXPERTS



WORKING WITH EXPERT – PRE TRIAL

1

Ask them what they need

Walk through the case with expert

2

Gather info/docs

Have client sign releases

Subpoenas

3

What do you need?

Your questions about the case

4

Provide Deadlines for expert

Timeline at each step

5Provide competing/opposing opinions
What is opposing side saying?

7

FACTS

6 month old boy

- 8/16/16 - Sick visit to pediatrician
* really fussy, cry with bathing & diaper changes, problems with right arm
* Pediatrician didn't see anything wrong with arm
- 8/24/16 - CT scan – rule out NAT, natural disease process
- Still having issues with arm – ED
- 8/26/16 – healing right distal humerus fracture; bruising – back of ears, penis, head, leg

EXPLANATION

- Arm caught between crib and bumper
- doesn't like bath tub – fights and cries

FACTORS

- Resp. Mother - SA history –opiate abuse
- Subutex – NAS baby – NICU for 33 days – increased tone, fussiness & self-soothing, poor weight gain
= "high risk"

DEVELOPMENTS

- 8/26/16 –DSS removal
- 9/20/16 – full body scan of sibling – non displaced small buckle fracture of the sternum
- 10/6/16 – second scan – buckle fracture with bony sclerosis at site of fracture consistent with healing

8

WORKING WITH EXPERT – PRE TRIAL

CASE STUDY – BROKEN BONES, etc → SUSPECTED ABUSE

1

- Pics of injuries – bruises, xrays
- Model – Bumby chair, bathtub, high chair, car seat, jumper/walker
- Developmental stages –rolling over

2

- SW notes, CME
- Medical releases signed – hospital, pediatrician, xrays
- Subpoenas – pictures from hospital
- Interview client – get detailed information per DR request

3

- Clarification of injury timeline
- Potential causes/ alternative explanations
- Unusual fracture – blow directly to chest
- What couldn't cause injury

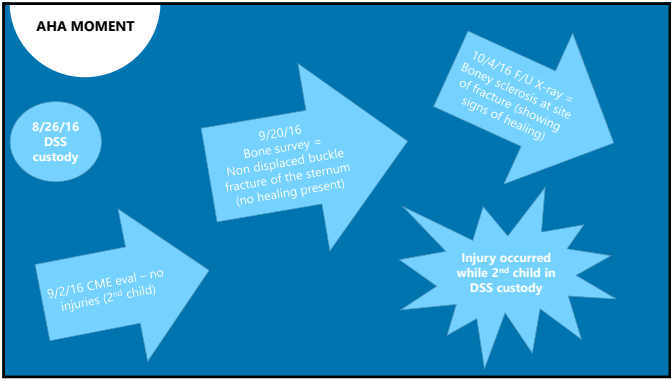
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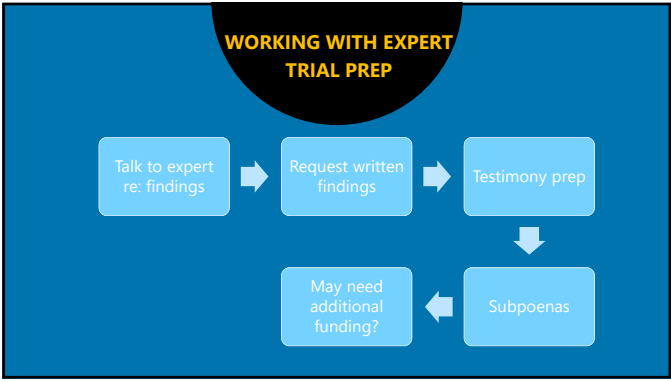
- Provide court dates
- Ask for turn around time
- Make sure records are complete – ask expert → what else do I need

5

- Provide copies of current opinions/ diagnosis
- Investigate info they were relying on for opinion → reliable?
- Ask for opinion in writing/ willing to testify?
- AHA moment

9





//

Fractures in children are dated by serial imaging to compare bone healing. Initially when there is a fracture no bone reaction will be seen on the bone surface (periosteum). Follow up imaging is typically performed 2 weeks later and will generally show periosteal reaction.

In this case the initial fracture was found on 9/20/16 and no healing was present. The follow up imaging on 10/4/16 showing clear signs of healing 2 weeks later is consistent with the fracture having been recent when it was first seen on 9/20/16. It should be noted this first bone survey on 9/20/16 was performed 26 days after [redacted] was placed into DSS custody. If the fracture had occurred before she was placed into DSS custody it would have showed definitive signs of healing 26 days (or a little under 4 weeks) later when found on 9/20/16.

Buckle fractures of the sternum occur from a direct blow to this bone in the midpoint of the chest. In children it typically occurs following a fall from a bike or a height onto a stationary object. To my knowledge no history of a dramatic accidental fall was reported by the foster parents. It would be crucial to this evaluation to discuss any possible accidental injuries with the foster parents. If [redacted] had decreased bone density her injury may have occurred from angrier minor trauma that may not be remembered. These fractures are typically painful but [redacted] was clearly showing no signs of pain from injury during her CME examination and no symptoms of pain were reported by her foster parents.

Following my review of the medical records, it is my opinion that the sternum fracture occurred after [redacted] was placed into DSS custody. I would like to recommend to the court to have a pediatric radiologist review the imaging on [redacted] to confirm this opinion.

In light of the fact that both children had a history of NAS and fractures from likely minimal trauma underlying medical conditions should be considered. Follow up imaging should be performed to evaluate for an underlying bone disorder that would make her more susceptible to fractures. If additional fractures are found in the future additional testing for vitamin deficiency or bone disorders should be considered.

12

Trial Resources

<http://www.ncids.org/ParentRepresentation/Training&Reference/TrainingandReferenceMaterialsIndex.htm>

<http://www.ncids.org/ParentRepresentation/Forms/TrialLevelForms/TrialFormsLinks.htm>

<https://www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights/chapter-11-evidence>

https://www.americanbar.org/content/dam/aba/administrative/child_law/session-b6.pdf

AND Manual - 11.10 Expert Testimony 11-71

QUESTIONS?

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Bringing the Data to Life: Data as a Tool for Parent Representation

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Freitas & Freitas, LLP, Massachusetts

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Freitas & Freitas, LLP, Massachusetts

Presented: 2019 NC Parent Attorney Conference
Build Your Toolkit
Chapel Hill, NC
August 8, 2019

Massachusetts Parent and Child Representation Overview

- Attorneys are certified upon successful completion of the Children and Family Law (CAFL) training program administered by the Committee for Public Counsel Services (CPCS), the state public defender office
- Hybrid model of representation:
 - Child Welfare attorneys are appointed to represent indigent parents and children in all phases of the state intervention court proceedings
- 20% of cases are assigned to CAFL staff offices
- 80% of cases are assigned to private practitioners who work as Independent Contractors for the state
- CPCS oversees and supports both staff and private panels

Why Use Data As a Tool in Child Welfare?

- Data provides facts that CANNOT be ignored
- Data generally supports our goals in parent representation
- While best interests typically haunts child welfare proceedings, it is NOT generally supported by data
- Knowing about data trends can help craft novel arguments or strategies in child welfare cases

Where to Find Child Welfare Data and Research

- Adoption and Foster Care Analysis and Reporting System (AFCARS)
- Child Welfare Information Gateway
- Local Practitioner Listservs
- State Child Welfare Agency (and oversight agency)
- Google Scholar/Open Source Research (ex: ResearchGate)

Bringing the Data to Life

Service Planning

Visitation

Racial and Ethnic Disparities

Evidence-Based Service Planning

Evidence-Based Service Planning

“It’s part of the nature of the system. They set up hoops for people to jump through, just to see how badly you want it and what you’re willing to do for it. I suspect it’s partly just to test people and their commitment...In a lot of cases, I think that I really want to see what somebody’s willing to do to get their kids back.”

-Anonymous social worker interviewee,
Smith and Donovan (2003)

Evidence-Based Service Planning: Notable Child Welfare Research (1)

- On average, parents are asked to complete 7.5 different services on their reunification service plans (D’Andrade and Chambers, 2012)
- Completing tasks on a service plan requires 22 to 26 hours per week (Brook and McDonald, 2007)
 - Substance abuse treatment: 9 hours per week for 6 months
 - Employment counseling/services: 5 hours per week for 6 months
 - Case management/meetings: 5 hours per week
 - Parenting classes/training: 2 hours per week
 - Other services (ie: therapy, DV counseling, etc.): 1-4 hours per week

Evidence-Based Service Planning: Notable Child Welfare Research (2)

- Poorer families possess fewer material resources and social supports, experience lower quality health, education, and housing (Zilberstein, 2016)
 - Must invest more time and resources in meeting basic needs
 - Require more coping ability and diligence to overcome these additional barriers
- A substantial portion of services are boilerplate services resulting in 35% of parents getting services for problems they don't have (D'Andrade and Chambers, 2012)
 - 17% had SA tasks but no SA issues
 - 26% had DV tasks but no DV issues
 - 20% had MH tasks but no identified MH issues

Evidence-Based Service Planning: Notable Child Welfare Research (3)

- Intensive or higher number of services does not consistently correlate with quicker reunification or lower re-entry (Brook and McDonald, 2007)
- Service plan tasks are not a proxy for change (Smith and Donovan (2003)
- Evidence based service planning (Berliner et al., 2015)
 - Prioritizes efficacy and efficiency: short-term, planned discontinuation
 - Focus and parsimony: smallest number of services needed to accomplish goal, focus on skill building
 - Triage and sequencing: meet basic needs first, stepped care

How Do We Leverage the Research?

- Change the narrative (hours) and create visuals (calendar)
- Hire your own social work expert (finding services, client empowerment, attorney consultation, etc.)
- Be involved in the drafting of service plans, advocate for:
 - Efficacy and efficiency: short-term, planned discontinuation
 - Focus and parsimony: smallest number of services needed to accomplish goal, focus on skill building (in person, hands on)
 - Triage and sequencing: meet basic needs first, stepped care
- Reasonable efforts (≠ “everything and the kitchen sink” service plan tasks) + nexus
- Abuse of discretion motions/motions to compel



Visitation

Parent-Child Contact

"That word 'visitation' was like a rainbow suddenly appearing out of a dull sky... just knowing I could be reunited with my family made me overjoyed."

- Donisha, child in NC Foster Care System

NC Division of Social Services and the Family and Children's Resource Program, *Fostering Perspectives: Views on Foster Care and Adoption in North Carolina*, Vol. 15(1) (2010).

Parent-Child Contact: Notable Child Welfare Research (1)

- Visitation time is a critical time for parents to learn and practice new skills (NC CW Worker Note October, 2000)
 - Typical visitation (1 hour visitation/week) is the equivalent of one full-time week at the end of the year (+/- 52 hours)
- Parent-Child Contact/Visitation is linked to positive outcomes
 - Improved child well-being (Hess, 2003)
 - Adjusted better to placement (Hess, 2003)
 - Spent less time in out-of-home care (Hess, 2003)
- Parent/Child Visitation is directly linked to reunification (Davis, et. al 1996)
 - Parents who visit their children as recommended by the child welfare agency are approximately 10 times more likely to be reunified

Parent-Child Contact: Notable Child Welfare Research (2)

- Research how other courts look at duration/frequency of visitation consistent with child developmental needs (ex: MA Probate Court)
 - Birth – 1 years old: At least 2-3 hours/visit with 3 visits weekly
 - 1-3 year olds: At least 4-6 hours/visit with 3 visits weekly
 - 3-5 years old: At least 4-6 hours/visit with 2 visits weekly and 1 overnight until noon next day
 - 6-12 years old: Overnights from Thursday-Sunday and 1 overnight during the work week
 - 13-18 years old: Overnights from Thursday-Sunday and 1 dinner with overnight during the work week
- Research why there is a presumption that visits should be supervised
 - See Georgia Juvenile Court Dependency statute, O.C.G.A. §15-11-112 (2019)

How do we leverage the Research?

- Draft Motions for Parenting Time include Proposed Orders
- Challenge standard visitation practices- unsupervised should be starting point
- Utilize your State's Family Court (divorce) parenting time guidelines, broken down by age group, as a framework for requests and orders
- Make Reasonable Efforts Arguments at each stage of the proceeding- raise this issue early and often
- Hire a SW/clinical expert to assist as part of your legal defense team



Racial and Ethnic Disparities

Racial and Ethnic Disparities

“Spend a day in the courts that decide child maltreatment cases in these cities and you very well may see only black or Latino parents and children. If you came with no preconceptions about the purpose of the child welfare system, you would have to conclude that it is an institution designed to monitor, regulate, and punish poor families of color.”

- Dorothy Roberts, *Colorlines Magazine*, 5.3 (Fall 2002);

Racial and Ethnic Disparities: Notable Child Welfare Research (1)

- Research has documented racial disparities at each stage along the child welfare pathway (Dettlaff et al., 2011)
 - Acceptance for investigation (Zuravin et al., 2005)
 - Substantiation of alleged maltreatment (Ards, et al., 2003)
 - Placement in out of home care (Rivaux, et al., 2008)
 - Length of time in placement
 - Longer time to reunification (Hill, 2005)
- Racial disparities in the CW system are not due to poverty alone, but are related to caseworker assessment of risk (Dettlaff et al., 2011)
 - Race was not an explanatory factor in substantiation decisions when only poverty (family income) was analyzed (Dettlaff et al., 2011)
 - BUT when caseworker assessment of risk was added to the model, race emerged as a significant explanatory factor in substantiation decisions. (Dettlaff et al., 2011)

Racial and Ethnic Disparities: Notable Child Welfare Research (2)

- Racial disparities in the courtroom began at the very door to the courthouse (Lens, 2019)
 - Demographic divide of clients vs. legal professionals
 - Separation by space, color, and clothing
- Clients in child welfare cases were marginalized in court, both through the rules of the adversarial process and through the construction of stereotypical narratives (Lens, 2019)
 - Key interactions tinged with racial stereotypical bias
 - The silence of parent voice in the courtroom
 - The narrative of blame, shame and helplessness
 - Brief courtroom interactions are synergistic for use of stereotypes/bias

How Do We Leverage the Research?

- Work with local attorneys/bar associations to implement Judicial Benchcards (available from NCJFCJ)
- Change the narrative: address structural barriers, emphasize the positive, and ensure everyone has a name and a voice
- Work diligently to locate family/kinship resources if the child cannot be immediately returned to the parent (AND advocate for equal service provision as if child was in foster care)
 - Consider hiring investigator, reach out to local community organizations to become kinship or foster care resources
- File motions specifically identifying the racial disparity issue and linking that disparity to reasonable efforts

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Bringing the Data to Life:

Data as a Tool for Parent Representation

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This document includes two charts: a Practice/Case Management Software Comparison Chart for Solo/Small Firm, and a Time & Billing Software Comparison Chart for Solo/Small Firm. Scroll down to view the Time & Billing chart. Last updated: February 2019

Practice/Case Management Software Comparison Chart for Solo/Small Firm (Note: May include time/billing features. See below for Time & Billing specific chart.)							
	Pricing	Technical Requirements	Front Office Tasks	Back Office Tasks	Software Compatibility (Import/export, etc.)	Mobile Access	Technical Support
AbacusLaw	<p>AbacusLaw from just \$77/month/user</p> <p>Abacus Private Cloud™ (full virtual law practice) starts at just \$197/month</p> <p>Custom, no risk proposal: http://www.abacuslaw.com/pricing/</p> <p>ABA members save 15% on AbacusLaw through ABA Member Advantage.</p>	<p>AbacusLaw: Windows 8, Windows 7, Windows Vista Business or Ultimate or Windows Server 2003-2012</p> <p>Abacus Private Cloud™: Any modern device with an Internet connection.</p> <p>(more info)</p>	<p>Fully integrated rules-based calendaring, case, contact and document management, email management, document assembly, auto-fill court forms, instant messaging, case notes and more.</p> <p>(more info)</p> <p>Practice Area Legal Solutions (PALS) are pre-configured products for specific areas of law. These out-of-the-box solutions come with the screens, rules, reports, documents, forums and terminology you need.</p> <p>Professional Services: The experienced Professional Services team offers law practice solutions that increase firm productivity and mitigate risks by customizing how you use the powerful</p>	<p>Available in AbacusLaw Gold: One-click time tracking, billing, accounting, trust accounting, general ledger, check writing, payroll, integrated credit card processing and ACH billing and more.</p> <p>(more info)</p>	<p>Abacus Private Cloud™ is software agnostic so you can use any applications, per your firm's requirements.</p> <p>Abacus Law: Microsoft Word, Outlook, WordPerfect</p> <p>Data Migration: Abacus Professional Services provides expert data migration from existing Case Management Software systems to the AbacusLaw platform (or platform for your choice)</p> <p>(more info)</p>	<p>Access your practice anytime, anywhere and from any device.</p> <p>Abacus offers both In-Office or Virtual Practice Environments. Not sure which is right for your needs? Let our experts help you assess your options with a no-obligation Technology Readiness Assessment.</p> <p>(more info)</p>	<p>Abacus Private Cloud includes fully managed IT, 24x7 monitoring, managed backups, inherent disaster recovery, antivirus and malware protection, firewall & intrusion prevention, unlimited technical support and more all from the U.S.</p> <p>AbacusLaw offers U.S. based support, M-F from 6am-5pmPST, by remote desktop, telephone, email and fax.</p> <p>(more info)</p>

			AbacusLaw™ platform to meet your firm's specific needs. (more info)				
Actionstep	Monthly subscription: \$60/month per user per month (includes Time and Billing)	Web-based, requires any internet browser: Internet Explorer Firefox Chrome Safari Mac or PC	Workflow, Document Management, Document Assembly, Time Recording, Email, Calendar, Contacts, Tasks, Integrated Accounting, Website Integration, Client Portal, Secure Document Exchange	Time tracking, billing and reporting, trust accounting	Microsoft Office Microsoft Outlook Google Calendar/Exchange Gmail (Google Apps) Calendar sync Xero HotDocs Data import/export. Data conversion from other programs.	Actionstep is web-based, and accessible on any mobile device including smartphones, iPad and other tablets.	Technical support is included free as a part of Actionstep's monthly subscription. Support options include email, telephone support and knowledge center
Amicus Attorney	Amicus Attorney Premium Edition 2014: \$999 1 st license, \$699 additional licenses. Optional additional fees for annual maintenance (\$350/\$295 respectively), annual tech support (\$195/\$95 respectively). Amicus Attorney Small Firm Edition 2014:	Premium Edition: SQL Server 2012/2008 R2/2008 (Standard/Enterprise) Windows Server 2012 R2/2012/2008 R2/2008/2003 R2/2003 SBS 2011/2008 R2/2008/2003 R2/2003 Windows 8.1/8/7/Vista Small Firm Edition: Windows Server 2012/2008	Matter management, contact relationship management, knowledge management, calendaring & docketing, universal communication inbox, document assembly, document management, conflict checking, to-do lists, deadline management. (more info)	Time tracking and reporting. Additional back office features available in Amicus Small Firm Accounting (see Time & Billing chart below).	Microsoft Exchange* Microsoft Outlook Google Calendar* Microsoft Word/Excel WordPerfect Adobe Acrobat/Reader HotDocs CompuLaw Worldox* Dropbox* SQL Reporting Services Amicus Premium Billing* Amicus Small Firm Accounting° Timeslips PCLaw QuickBooks Tabs3 Juris	Amicus Anywhere* provides a secure live connection through a web browser. (more info) Amicus TimeTracker lets you do time entries on your smartphone. (more info) Contacts and Calendar sync with any mobile device via Outlook, Exchange* or Google*. (more info)	Annual technical support plans offer unlimited telephone & email support, web-based remote desktop assistance, access to experts, convenient hours. (more info) Annual maintenance plans offer access to Amicus Anywhere, Amicus TimeTracker, automatic software upgrades and updates in addition to technical support. (more info)

	<p>\$499 1st license, \$399 additional licenses. Optional additional fees for annual maintenance (\$240/\$160 respectively), annual tech support (\$195/\$95 respectively).</p> <p>(more info)</p>	<p>R2/2008/2003 R2/2003 SBS 2011/2008 R2/2008/2003 R2/2003 Windows 8.1/8/7/Vista</p> <p>(more info)</p>			<p>Plus numerous other accounting and billing applications</p> <p>(more info)</p> <p>* Premium only ° Small Firm only</p>	* Premium only	
Amicus Cloud	<p>\$45/month per user when paid annually \$49.95/ month per user</p> <p>(more info)</p>	<p>Web-based – Use with any modern browser: Internet Explorer 9 or above, Firefox 9 or above, Safari 5 or above, Chrome 16 or above</p>	<p>Matter management, contact relationship management, calendaring & docketing, universal communication inbox, document assembly, document management, conflict checking, task & deadline management.</p> <p>(more info)</p>	<p>Time tracking and reporting, billing and trust accounting</p>	<p>Microsoft Outlook Dropbox Box.com QuickBooks</p> <p>Electronic time entry posting to accounting systems, with pre-set templates for QuickBooks, Timeslips and PCLaw.</p> <p>(more info)</p>	<p>Amicus Cloud is web based and accessible from any device with a modern web browser.</p> <p>(more info)</p> <p>Amicus TimeTracker lets you do time entries on your smartphone.</p> <p>(more info)</p> <p>Completely integrated email, calendaring, contacts and tasks on your PC (or in most apps on your smartphone or tablet). Everything you see/do in Outlook, Mail, Calendar, Reminders & Contact on the Mac, iPad or iPhone is instantly in Amicus</p>	<p>Unlimited technical support is included with the Amicus Cloud subscription. Support options include toll free phone, email and live chat.</p>

						Cloud, and vice versa. (more info)	
CASEpeer	1-3 users: \$55/user/month 4-9 users: \$70/user/month 10+ users: \$85/user/month No long-term contracts, no set up fees (more info)	Any computer, phone, or tablet with an internet connection. Mac and PC compatible.	Organized case management specialized for personal injury & mass torts (more info) Client communication tools including texting, client portal, and e-signatures (more info) Document management & letter generation (more info) Lead tracking and marketing reports (more info) Calendaring, tasks, & custom workflows (more info) Negotiation tracking & projections (more info)	Cost and client trust tracking (more info) Built-in reports and management screens (more info) Granular permission settings (more info) Employee performance & productivity reports (more info)	Data migrations available Integrations include: - Dropbox - Google Calendar - iCal - Outlook - Calendar Rules - eFax - Alert Communications - Ngage Live Chat	Mobile app (iOS) Access from any device with internet connection	All support services are free Friendly help via email, phone, or online chat Free training as needed Free weekly training Online knowledge base with help videos (more info)
CosmoLex	1 st Month Free (no obligation) Thereafter, \$49/month per user when paid annually \$59/month per user	Web-based, accessible from any mobile device with an Internet connection. Mac, PC, Tablets or Smartphones.	Workflow, Docket Control, Document Management, Calendar & Tasks, Case Notes, Matter Management, Contacts, Conflict Checking	Time & Expense Tracking, Billing, Payment Reminders, Low Retainer Reminders, Legal Accounting, General Ledger, Trust (IOLTA) Accounting, AR, Check Printing,	CosmoLex is a single login, all inclusive system that combines practice management, billing & accounting, including trust accounting. All reports can be	Web-based, accessible from any mobile device with an Internet connection. Mac, PC, Tablets or Smartphones.	Live unlimited U.S. based support.

	Pricing includes unlimited US Based support & training. (more Info)			Bank Reconciliations, Management & Financial Reporting. CosmoLex users do not need a separate accounting software. (more Info)	saved in Excel or PDF formats. CosmoLex also integrates with: DropBox Box Google Calender (more Info)		
Clio	Monthly subscription when billed Annually: Starter: \$39 Boutique: \$59 Elite: \$99 ABA Members save 10% on the lifetime of their subscription of Clio through ABA Member Advantage. Pricing Info	Web-based, requires Google Chrome, Firefox, Internet Explorer 10.0+ or Safari	Matter/case management, document management, client/contact management, calendaring, task scheduling, practice performance metrics, document assembly and sharing/collaboration , secure communications, and client portal. Features Info	Time tracking, billing and invoice generation, trust accounting, accounts receivable, firmwide and individual attorney reporting, and online bill payments via LawPay. Features Info	Seamlessly integrate Clio with hundreds of leading applications. Fastcase, LawPay, Office 365, Xero, Quickbooks, Fundbox, Dropbox, Google Apps, Box, Lexicata, Zapier, Ruby Receptionists, Fujitsu ScanSnap, gUnify, and many more	Clio has an iPhone and Android app. (more info) Clio can be accessed via mobile-optimized versions as well on tablets, Blackberry phones, and other mobile devices. Mobile Info	Award winning Technical Support and Data Migrations are included free as a part of Clio's monthly subscription. Support options include phone (800-number), chat, social media, and email. Agents are available 5am to 5pm (PST) to help with any questions. Support Info
Credenza	Credenza Basic: Free Credenza Pro: \$24.95/month per user (more info)	Requires Outlook 2013 (32-Bit)/2010 (32-Bit)/2007/2003 running on Windows 8/7/Vista/XP (more info)	Credenza Basic: Matter management, contact relationship management, calendaring, phone call recording, task management, document management. (more info) Credenza Pro:	Credenza Basic: Time tracking, reporting. Credenza Pro: Billing, payment tracking, time tracking, batch billing, collections, trust accounting, reporting, posting to	Microsoft Office 2013/2010/2007/2003 Electronic time entry posting to accounting systems, with pre-set templates for QuickBooks, Timeslips and PCLaw.	Contacts and Calendar sync with any mobile device via Outlook. (more info)	Online Help Online Knowledge Base & Troubleshooter. Unlimited technical support and all upgrades are included with the Credenza Pro monthly subscription.

			Includes all features of Credenza Basic, but adds sharing/collaboration , system-wide search. (more info)	popular accounting systems. (more info)	(more info)		
Firm Central	\$35/user/month	<p>Web-based Windows 7 or Windows 8 Internet Explorer 8 or later, Firefox 7.0 or later, Safari 5.0 or later, or Google Chrome 7 or later</p> <p>Mac OS 10.5 or later running Safari 5.0 or later, Firefox 7.0 or later, or Google Chrome 7 or later</p> <p>JavaScript and cookies enabled Adobe Reader 9.4 or Adobe Flash 10.0 installed 1024 x 768 screen resolution (or higher) recommended</p>	<p>Matter and document management, calendaring, task management, client/contact management, secure client portal, indexing documents, global search, document sharing, conflict checker, custom fields for contact/clients and matters</p> <p>(more info)</p>	<p>Preloaded ABA Billing codes, hourly, flat-rate and retainer billing options, trust accounting, billing by client, matter, activity and firm member, invoicing, batch invoicing, time/expense tracking, trust accounting, online bill paying</p>	<p>Time and Billing (see Time and Billing Comparison Chart) WestlawNext Practical Law Westlaw Doc & Form Builder Custom Forms Drafting Assistant Microsoft Outlook & Windows Explorer</p> <p>Data import/export is available through Microsoft Excel</p> <p>(more info)</p>	<p>Firm Central is web-based and accessible from any device with a web-browser. A smartphone optimized version is also available</p> <p>(more info)</p>	<p>Technical Support is available 24/7</p> <p>Product how-to videos and webinars are also available</p> <p>(more info)</p>
Filevine	Monthly fee for each user	Any modern device with an internet connection	Case and contact management (more info)	Custom reports and dashboards	Data migration available	Optimized for mobile web-browser	Free email, chat, phone support

	<p>Initial setup fee for personalized configuration and data migration if necessary</p> <p>Call now to get a quote</p> <p>(more info)</p>		<p>Automated task workflows</p> <p>(more info)</p> <p>Role-based tasking and team collaboration</p> <p>(more info)</p> <p>Client communication via email and texting</p> <p>(more info)</p>	<p>(more info)</p> <p>System audits</p> <p>(more info)</p> <p>Employee performance reports</p> <p>(more info)</p> <p>Expense tracking</p> <p>(more info)</p> <p>Settlement calculator</p> <p>(more info)</p>	<p>Integrations:</p> <ul style="list-style-type: none"> -Quickbooks -Vinesign -Dropbox -Domo -Slack -NetDocs -OneDrive -Google Drive -Primafact <p>(more info)</p> <p>APIs:</p> <p>(more info)</p>	<p>Accessible from any mobile device with internet.</p>	<p>Dedicated customer success manager</p> <p>Comprehensive knowledge base with step-by-step written and video instructions</p> <p>(more info)</p>
			<p>Document generation, management and sharing</p> <p>(more info)</p> <p>Collect e-signatures via text or email</p>				

			(more info) Integrated calendaring for individual and office (more info)				
HoudiniESQ	SaaS/Cloud: \$64/month per seat (more info) 5 seat on-premise license-also web-based: \$2240 (\$1280 one time, \$960 annually) (more info) Free for solo practitioners, including support	Web-based, runs in most modern web browsers (i.e. Safari, FireFox, Chrome and Opera) On-premise install runs on Windows, OSX and Linux. (on-premise is also web-based) Some router configuration required.	Matter, email, document, contacts, and to-do/tasks management; group calendaring and scheduling; document assembly/generation ; alerts and reminders; web-based client access; IM and chat; matter and GTD dashboards. (more info)	Time tracking and reporting; trust accounting ant retainers; billing; batch billing; invoicing;ad-hoc reporting; staff performance reports; AR reports; call center dashboards; trust accounting report dashboard. (more info)	MS Outlook MS Word MS Excel Intuit QuickBooks (no export/import required) PDF plugin Calendar Rules All plug-ins are included at no additional cost (more info)	Included. Supports iPhone, Android and Blackberry	Included at no additional cost.
LEAP	Introductory pricing at \$149 per user per month (12 month money back guarantee)	Cloud-based, Requires a workstation per user & internet access - Each user must have Microsoft Office installed locally (essential for complex document merging). - Integrates with Outlook using	Legal case management and legal accounting solution in a single application. Productivity systems including automated document production and tasks are combined with all the record keeping. (more info)	Time recording (mobile & desktop), billing and your legal compliant trust accounting. (more info)	Data transition from existing software into LEAP. Real-time integration with: QuickBooks®, Microsoft® Word, Microsoft® Outlook, Microsoft® Excel Requires Microsoft Windows (32 bit or 64 bit) installed to C:\ drive: - Windows 8.1	Accessed on your laptop, notebook, or Windows tablet. Mobile Apps: iPhone Android (more info)	<ul style="list-style-type: none"> - Onsite Installation and training by LEAP consultant. - Helpdesk support available 24/5 - Online LEAP community – training videos, chats with other users, search via topic.

		POP 3, Exchange Server or Outlook 365 and Google Apps for Business. - Requires a QuickBooks Online or Xero subscription. (more info)			- Windows 10 Starter and RT editions of Windows are not supported. (more info)		
Legal Files	Contact sales team for quote. 1.800.500.0537 or sales@legalfiles.com (more info)	Legal Files is a web client that utilizes a browser on the desktop. Use the link below to see more information on the technical environment. (more info)	Case/contact management, email, document assembly and management, relationship management, conflict checking, calendaring, automatic notification system for tasks and to-do's.	Time management, budgeting, expense tracking and eBilling module	Microsoft Office suite Numerous popular document management and accounting programs. (more info)	In addition to accessing Legal Files from anywhere through your browser, Legal Files Mobile provides an iOS application designed for the iPhone and iPad devices.	Yearly maintenance and support agreement available, offering unlimited help desk support, all upgrades to the application, and online customer resource center. Contact company for additional information. 1.800.500.0537 or sales@legalfiles.com
MyCase	Monthly subscription: \$39/month per attorney \$29/month per paralegal/staff ABA members save 20% on their subscriptions to MyCase through ABA Member Advantage.	Web-based, requires any internet browser: IE9 or later Firefox 3.5 or later Safari 4 Chrome Mac or PC	Legal Practice Management includes: Client & Team communication in a secure portal, calendar management, client message, document management / collaboration / storage, matter/case management, client/contact management, task & to-do scheduling.	Time & billing, time tracking, trust accounting, receives online payments, firm reporting.	Microsoft Outlook Plugin Google Calendar Google Docs Apple iCal Apple Contacts QuickBooks Email integration	MyCase is web-based and accessible on any mobile device including smartphones, iPad, and other tablets. MyCase has an app built for Android and iPhones.	Technical Support and Getting Started Help are included free with the monthly subscription. Support options include email, telephone support, and knowledge center. MyCase customer support is available 6am-5pm PT Monday-Friday.
Needles	Licenses 1-10: \$1,000 per user. Annual support,	Workstation: Windows 2000, XP, Vista.	Notes, calendar, document management, case	Marketing, expense tracking,	Acrobat Corel WordPerfect Docs Open	Remote access (more info)	New Needles clients must undergo initial training and

	Sybase, and implementation /training at additional cost. Pricing calculator available on website.	Server: Windows 2003, 2008. (more info)	status, e-mail, IM, case files, conflict checking, statute tracking. (more info)	reporting, import/export to other Needles firms. (more info)	Hot Docs Microsoft Suite QuickBooks Timeslips Worldocs (more info)		implementation with certified training consultant. Annual support provides technical support M-F, 8:30-5:15pm EST. (more info)
PracticeMaster	\$600 for first user (\$280 per add'l user). To request, please visit our pricing page .	Tabs3and PracticeMaster Software is compatible with all supported versions of Windows and Windows Server.	Matter and contact database, firm-wide calendaring, conflict checking, document management, common task templates, document assembly, document management integration, area of practice customization. (more info)	Fee and cost entry. Tabs3 products can be purchased for back office billing, accounting, A/R, A/P, trust accounting and check writing. (more info)	Tabs3 Billing, Paperport, Outlook, HotDocs, Worldox, Microsoft Word, WordPerfect, Compulaw court rules. (more info)	Tabs3 Connect is available for those who use the Platinum version of both Tabs3 and PracticeMaster. (more info)	Free knowledgebase, free telephone support for the first year, annual maintenance plan available which includes unlimited telephone support and free updates.
ProLaw	Contact ProLaw for pricing. Information request form available on web page , or call 1-800-977-6529.	Workstation: Windows 2000 Pro, XP Pro, Vista Business/Ultimate. Server: Windows Server 2000, Server 2003 R2, Server 2008 running Microsoft SQL Server 2000/2005/2008. (more info)	Matter management, contacts, document assembly/mgmt, email, appointments/tasks, docketing, calendaring, in-context Westlaw research, records management. Specialized practice area modules available. (more info)	Time/expense tracking, budgeting, collections, billing, cost recovery, contingency analysis & disposition, integrated accounting. (more info)	Microsoft Suite Lotus Domino/Notes GroupWise Acrobat HotDocs DOCS Open OpenText Interwoven Worldox PeachTree QuickPayroll (more info)		ProLaw offers support for planning & implementation, training & adoption, and technical support. (more info)
Rocket Matter	\$55 per user per month. Discounts	Rocket Matter runs on any current browser	Comprehensive matter management.	Supports multiple billing & fee	Calendar subscription can be read by Outlook	Fully native suite of apps. Access from any mobile device	Unlimited phone and email support provided by our award-winning, U.S. based

	<p>available for two-year or longer commitments. Quarterly and monthly options are also available.</p> <p>Price includes unlimited access to our full suite of web and mobile apps, as well as to automatic backups, military grade security, and u our award-winning support and training. Schedule a private demo for your firm: Check out rocketmatter.com/try-us or call 888-432-1529.</p>	<p>and operating system, including Internet Explorer, Firefox, Chrome, Safari, and Windows or Mac. Microsoft Outlook integration requires Windows 7 or later.</p> <p>(more info)</p>	<p>Individual and firm-wide calendaring. Unlimited data and file storage. Comprehensive document assembly with unlimited custom merge fields. Contact management with conflict checking. Email Integration. Dropbox, Box, Evernote, Gmail, Google Calendar, Microsoft Office integration. Easy to access firm-wide reporting, including detailed revenue analysis and user information. Rocket Matter Intake feature that automates the client intake process and increases lead conversion. Customizable matter templates and workflow. Client Portal, including sharing documents, calendar events and invoices. Calendar event notifications and alerts. Comprehensive features list: rocketmatter.com/features</p>	<p>arrangements, including hourly, flat fee, contingency, and hybrid billing structures, along with detailed expense tracking and trust accounting. Expense tracking and reporting. Trust account management. Batch billing, enabling all invoices to be run with one click. Electronic invoices and email-based billing. Integrated credit card and ACH processing via Rocket Matter Payment Processing. Evergreen retainer functionality. Exclusive Bill-As-You-Work™ technology. Multiple timers for better multi-tasking. Detailed financial analysis reporting, including allocation, origination, and realization rates.</p>	<p>2007, iCal, Sunbird, Google Calendar, and most other compliant calendaring programs.</p> <p>Mail merge with Microsoft Word for form letter/label generation.</p> <p>Invoices can be created in WordPerfect, Word, or PDF.</p> <p>Reports and data can be backed up to CSV files readable with Excel.</p>	<p>that employs a full browser. Optimized for use with all Android and iOS compatible devices, including iPad, iPhone and Droid.</p>	<p>team. Support hours are M-F 8am-8pm EST. Rocket Matter responds to most support inquiries in 1 hour or less and guarantees a maximum response time of 1 business day. Rocket Matter subscriptions include training and access to our comprehensive library of how-to documents and videos. Live training webinars twice per day. Click here for schedule.</p>
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				<p>Automatically add taxes to your invoices.</p> <p>Quickbooks Online integration.</p> <p>Ledes compatibility.</p> <p>Industry leading time & billing: rocketmatter.com/billing</p>			
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<p>SMARTADVOCATE</p>	<p>One-time fee starting at \$995 per user license.</p> <p>Software updates are included in a maintenance and support contract.</p> <p>Initial software training is required and will be included in the initial price quote.</p> <p>(more info)</p>	<p>Server Requirements:</p> <p>Windows Server 2008/2012 MS SQL Server 2008 R2/ 2012 (Standard/Enterprise) MS IIS 7.0/8.0 MS Office 20010/2013</p> <p>WorkStation Requirements:</p> <p>Windows 7/8 MS Office 2010/2013 Internet Explorer 11 Chrome 16 or above.</p> <p>(more info)</p>	<p>Case Management; Contact Relationship Management; Document Management; Document Assembly; Critical Deadline Management; Task Management; Work Plans; Barcode Document Scanning; Email Management; Note Management; Case and Firm Calendaring that integrates with Outlook; Knowledge Management; Conflict Check; Detailed Reporting with Subscription; Case Timeline; Productivity and Practice Management; Mail Merge; Task Management; Specialized practice areas.</p> <p>Professional Services to increase law firms efficiency and effectiveness available.</p> <p>(more info)</p>	<p>Reporting; Document Merging; Time Tracking; Expense Tracking; Work Plans which automate document generation, note creation, email creation and case status changes.</p> <p>(more info)</p>	<p>eLaw Integration; Microsoft Exchange; Microsoft Outlook ; Google Calendar; Microsoft Word; Microsoft Excel; Adobe Acrobat;; SQL Reporting Services; QuickBooks.</p> <p>(more info)</p>	<p>Access your practice anytime, anywhere and from any device through browser.</p> <p>(more info)</p>	<p>Unlimited technical support is included with the SmartAdvocate Maintenance and Support Plan which include toll free phone, email and live remote support provided by in house technicians.</p> <p>Email support@smartadvocate.assistent.com or call 1-877-438-7627 24 hours/7 days a week.</p> <p>http://www.smartadvocate.com/support</p>
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Smokeball	<p>\$99.00/per user, per month.</p> <p>A one-time Smokeball Onboarding fee, is also charged at the time of signup.</p> <p>Onboarding fees range from \$300-\$1,000 dependent on law firm size.</p> <p>(more info)</p>	<p>Windows 10, 8.1, 8, or 7</p> <p>Smokeball does not work on Mac.</p> <p>(more info)</p>	<p>Matter/case management, document management, email management that integrates with Outlook, to-do lists, manage next-steps for cases, , document automation that integrates with MS Word, matter specific client management, matter notes, calendaring, practice performance metrics and reporting, and sharing/collaboration</p> <p>(more info)</p>	<p>Smokeball offers an integration with Clio for all time, billing and accounting features.</p> <p>(more info)</p>	<p>Microsoft Office 2013, 2010, or 2007</p> <p>*To reap the full benefits of Smokeball, we require that you use Outlook as your Email Manager, and MS Word for document creation.</p> <p>*Smokeball does not work on Mac.</p> <p>(more info)</p>	<p>Android & iPhone Companion Apps are available at no extra cost.</p> <p>(more info)</p>	<p>Smokeball offers US Based Support from 8:30-5:00pm.</p> <p>Most support issues can be addressed over the phone, or remote support.</p> <p>(more info)</p>
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OnPoint.Legal for Office 365 by Symbioshare	<p>Annual subscription: \$31.46/user/month.</p> <p>\$34.95/user/month if paid monthly.</p> <p>10% discount to Active ABA members through ABA Member Advantage.</p> <p>3 hour group training included in plan.</p> <p>Additional training available upon request; additional charges may apply.</p> <p>Data & Document migration available for all active matters at installation upon request. Additional charges apply.</p>	<p>Windows 7 or greater; and Office 365 Business Premium; or Office 365 Business Essentials with Microsoft Office 2013 or later.</p>	<p>Fully integrated two way synchronization between all Microsoft Office Applications and Onpoint.Legal, including email management, calendar, contact management, document assembly, customizable template and document libraries, drag and drop document filing, document collaboration, document versioning, case notes, medical chronology, and more.</p>	<p>OnPoint.Legal takes advantage of Microsoft's offering of 25TB of included cloud storage and email hosting available with O365 recommended plans.</p> <p>OnPoint.Legal integration with O365 can eliminate need for separate data backup plan and email hosting fees and expenses.</p> <p>OnPoint.Legal eliminates need for dropbox.</p> <p>Ability to track case expenses and more.</p>	<p>Fully integrates with all Microsoft Office and Adobe Applications.</p> <p>Compatible with Mac, PC, Tablets, or Smartphones with internet access</p>	<p>Access your information anytime, anywhere, anyplace from any device.</p> <p>Two way synchronization of data with native IOS and Android Apps</p>	<p>Live tech support, M-F, 8:30 a.m. - 6:00 p.m. EST via phone, screenshare, or email.</p>
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Time Matters	1 st user: \$950 Additional users: \$525 (includes 1 st year maintenance plan) (more info)	Workstation: Windows XP, Vista. Business/Pro edition recommended. Server: Windows Server 2003/2008 with Microsoft SQL 2005/2008. (more info)	Contacts, matter management, docketing, calendaring, document management, communications, data import/sync (more info)	Time capture (more info)	PCLaw Juris Timeslips QuickBooks Other "billing, document management, e-mail and other desktop business applications." (more info)		Online support center with articles/FAQs. (more info) Online service center available for licensed customers. Live-answer telephone support available M-F, 8am-8pm for strictly technical issues. (more info)

<p>TrialWorks</p>	<p>TrialWorks offers one product with two deployment options: http://www.trialworks.com/trialworks-trialworks-hosted/</p> <p>-On premise local install (TrialWorks Non-Hosted) – Designed for those ready to own their software and prefer to run servers locally on premise.</p> <p>-TrialWorks Hosted (Private Cloud) -The hosted platform is an alternative to owning your own equipment and is accessible from virtually anywhere.</p> <p>Not sure which is right for you? Contact sales for pricing and to discuss Implementation options. 1-800-377-5844 or sales@trialworks.com</p>	<p>http://www.trialworks.com/system-requirements</p>	<p>Litigation centered approach to matter management.</p> <ul style="list-style-type: none"> -Easy-to-use tab format. -Document generation within a case or across multiple cases. Create legal documents and import scanned documents. Track documents by party. Microsoft Office plugin – Word, Excel or PowerPoint. -Keep track of SOL, incident dates, trial dates, depositions, document due dates, and events. – Two way Microsoft Outlook integration -Track E-mail via our Outlook plugin. -Settlement Calculator and negotiations management. -Robust Medical Request and Medical Records tracking. -Contact Management – Conflict checks, Expert database, Reporting. 	<p>Track time & manage productivity with timekeeping reports</p> <ul style="list-style-type: none"> -Accounting integrations – QuickBooks, Tabs, Juris, PCLaw, TimeSlips, PerfectLaw, Peachtree -Cost Recovery integrations – post printing, scanning, copying, postage expenses to a client file -Extensive Settlement Reporting – Settlements by date range, Expected Settlement Reports, Firm Inventory Reporting -Automated Closing Statements 	<p>TrialWorks is an ODBC SQL database. Any data entry field, note, docket item, etc. can be pulled into a dashboard. Dashboards can be exported to excel format.</p> <ul style="list-style-type: none"> -Captorra intake integration -Import XML format Intake Cases -Accounting Integrations -Rules based calendaring integrations -Cost Recovery integrations -Medical records retrieval integrations -eFax -DocuSign -Tapi Phone Integration -A list of partners/Integrations - <p>http://www.trialworks.com/partners-integrations/</p>	<p>Access your practice using the TrialWorks Mobile app -</p> <p>http://www.trialworks.com/mobile-app-download/</p>	<p>Unlimited user & technical support, Unlimited Program upgrades (released quarterly) and the TrialWorks Mobile App is included with a TrialWorks Maintenance Agreement.</p> <p>http://www.trialworks.com/support/</p> <p>Maintenance includes:</p> <ul style="list-style-type: none"> -TrialWorks will provide telephone, ticket system, live “chat” & email software support M-F from 8:00 AM through 8:00 PM Eastern Standard Time, and Saturdays from 8:00AM-2:00PM. -TrialWorks will provide an Internet based support system generally available seven (7) days a week, twenty-four (24) hours a day. techsupport@trialworks.com -Knowledge base articles via TrialWorks Wiki - http://wiki.trialworks.com/index.php?title=Main_Page
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<p>PracticePanther</p>	<p>Only \$49/month/user billed annually or \$59/month/user billed monthly.</p> <p>One low price, everything included. No contracts. Free to cancel anytime.</p> <p>Unlimited free trial for your first 3 client and 3 cases.</p> <p>(start free trial)</p>	<p>No computer expertise needed. Web-based software in the cloud. Login from anywhere.</p> <p>Runs on any computer, smartphone, and tablet.</p> <p>(more info)</p>	<p>Manage your matters and contacts. Schedule events. Share tasks and documents with your team.</p> <p>Get real-time notifications and a daily agenda. Chat with your team.</p> <p>Sync your calendar and emails with Gmail, Exchange, Outlook, and more.</p> <p>(more info)</p>	<p>Built-in accounting with over 30 reports. View billable hours by each attorney.</p> <p>Track time and expenses. Create invoices. Accept payments online. Give clients access to their client portal.</p> <p>(more info)</p>	<p>Import clients from excel. Transfer contacts from your email address book. Export all data to excel in one click.</p> <p>Easy in, easy out.</p> <p>Sync with Outlook, Gmail, Exchange, Office365, Outlook, Quickbooks, Box.com, LawPay, PayPal, Stripe, Authorize.net, and more.</p> <p>(view integrations)</p>	<p>PracticePanther has iPhone, iPad, and Android apps.</p> <p>Accept mobile payments from your clients.</p> <p>The entire site is mobile friendly and responsive to any smartphone and tablet. You can use every feature from any device.</p> <p>Track your time from your smartphone, and continue from your computer.</p> <p>Login and work from anywhere in the world.</p> <p>(more info)</p>	<p>Unlimited world-class support including a dedicated account manager assigned to your firm. Includes phone support, email, live chat, and short tutorial videos.</p> <p>The software is easy to use, intuitive, and user friendly. Sign up and get a demo today by clicking the link below.</p> <p>(more info)</p>
<p>ZOLA Suite</p>	<p>Core: \$59/user/month *</p> <p>Enterprise: \$79/user/month *</p> <p>Enterprise Plus: \$89/user/month *</p>	<p>Web-based, accessible from any device with Internet connection. PC, Mac, Tablets and Smartphones. Dedicated iOS and Android apps.</p>	<p>Fully integrated email, matter management, contact relationship management, calendaring, task scheduling, secure client portal, unlimited document storage, sophisticated matter-based note feature, performance metrics and reporting.</p>	<p>Fully integrated legal accounting (general ledger, trust (IOLTA), checkwriting, timekeeping and billing. No need for external accounting platforms. LEDES/Electronic Billing with UTBMS Codes. (more info)</p>	<p>Zola doesn't rely on integrations with third party software. Everything that an attorney needs to run an efficient law practice, from email to billing and even document management, is built directly into the platform. Zola's integrated email is compatible with most IMPA and Microsoft Exchange-based email providers. Data can be</p>	<p>Web-based, accessible from any device with Internet connection. PC, Mac, Tablets and Smartphones. Dedicated iOS and Android apps.</p>	<p>On-line live, unlimited, U.S. based technical support is included with the Zola Suite subscription. Extensive online knowledge center. CoCounselor Plaintiff's Software</p> <p>As an ABA Buyer's Guide visitor you will receive a 10% subscription discount for up to five (5) users per account. Reach out to us at info@zolasuite.com or give us a call at 855.965.2360 to get the discount code.</p>

					imported from any program that exports cleanly to a CSV file. All reports can be exported to CSV file or PDF formats.		
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Time and Billing Software Comparison Chart for Solo/Small Firms								
	Pricing	Technical Requirements	Key Accounting and Billing Tasks	Types of Billing Supported	Software Compatibility	Data Conversion Available	Mobile Access	Technical Support
Amicus Premium Billing Amicus Small Firm Accounting	Amicus Premium Billing: \$199 per license. (Works with Amicus Premium Edition 2014) (more info)	Amicus Premium Billing: SQL Server 2012/2008 R2/2008 (Standard/Enterprise) Windows Server 2012 R2/2012/2008 R2/2008/2003 R2/2003 SBS 2011/2008 R2/2008/2003 R2/2003 Windows 8.1/8/7/Vista	Amicus Premium Billing: Billing, collections, trust accounting, time tracking, expenses, productivity reporting (more info)	Amicus Premium Billing: Hourly, flat fee, contingency, consolidated billing, e-billing.	Amicus Premium Billing: Amicus Attorney Premium Edition 2014 QuickBooks Adobe Acrobat/Reader Microsoft Word SQL Reporting Services (more info)	Amicus Premium Billing: Yes – please call our Services Department at 800-472-2289.	Premium Billing provides secure live connection through a web browser with Amicus Anywhere. (more info)	Annual technical support plans offer unlimited telephone & email support, web-based remote desktop assistance, access to experts, convenient hours. (more info)
	Amicus Small Firm Accounting: \$399 1 st license, \$299 additional licenses. Optional additional fees for annual maintenance (\$70/\$70 respectively), annual tech support (\$100/\$50 respectively). (more info)	Amicus Small Firm Accounting: Windows Server 2012/2008 R2/2008/2003 R2/2003 SBS 2011/2008 R2/2008/2003 R2/2003 Windows 8.1/8/7/Vista	Amicus Small Firm Accounting: Time tracking, billing and full General Ledger accounting. Includes check writing, accounts payable and productivity reporting. (more info)	Amicus Small Firm Accounting: Hourly, split, flat fee, consolidated, e-billing.	Amicus Small Firm Accounting: Amicus Attorney Small Firm Edition 2014	Amicus Small Firm Accounting: Guide to migrating from another accounting system available: see PDF. (more info)	Amicus TimeTracker lets you do time entries on your smartphone. (more info)	Annual maintenance plans offer access to Amicus Anywhere, Amicus TimeTracker, automatic software upgrades and updates in addition to technical support. (more info)

Bill4Time	<p>All plans receive a free 30 day trial. Free - Students (with .edu email) free while in school.</p> <p>Solo - \$30 per month for first user, \$20 per month for the second user (2 User Limit). Pro - \$50 per month for first user, \$20 per month for additional users (Unlimited Users).</p> <p>Pro - \$100 per month for first user, \$25 per month for additional users (Unlimited Users).</p> <p>(more info)</p>	All operating systems - the software is online so isn't subject to specific operating systems. For both Mac and PC. All browsers – Internet Explorer 9+, Firefox, Safari, Chrome.	<p>Mobile time and expense tracking, customer service, scheduling, time attendance, firm management, project management, document management, business productivity control, reporting, accounting, invoicing, billing, trust accounting, IOLTA accounting.</p> <p>(more info)</p>	Hourly, Recurring, Fixed fee, Retainer, Task based, Automatic.	<p>Uploads all formats for file management. Integrates with Quickbooks. Exports firm data in CSV.</p>	Pre-existing database conversion easily possible with Bill4Time free technical support.	<p>iPhone, iPad, Android, BlackBerry and Kindle Fire mobile app</p> <p>Laptops disconnected from the internet can use a desktop widget to track time.</p> <p>(more info)</p>	<p>All subscribers get free technical support. Enterprise users receive premium support. Free system updates and daily back-ups. Free tutorials, webinars scheduled weekly, and group tutorials upon request..</p> <p>Free access to video tutorials and knowledgebase.</p>
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BillQuick	Free 30-Day Trial Basic edition starts at \$14.95/user/month	Available as a stand-alone solution (BillQuick Desktop), hosted on-premise solution (BillQuick Web Suite) or SaaS, on the cloud (BillQuick Online) Stand-alone version runs on all windows operating systems (Win XP, Vista, 7 and 8) Browser-based/Cloud version runs in IE 7 or later, Chrome 7 or later, Firefox 4 or later, Opera 11 or later, Safari 5 or later	Intuitive Time & Expense Tracking – Time card in calendar, spreadsheet and stopwatch formats. Unlimited multiple timers. Attach files and links. Simplified Billing & Accounts Receivable – Over 150 customizable invoice templates. Retainer, recurring, fixed, hourly, or more. Powerful Reporting: Over 500 templates. Automatic report delivery. Memorize reports. (more info) (more info)	Hourly, Recurring, Fixed fee, Retainer, Task-based, Automatic	QuickBooks Sage50 Microsoft Office Microsoft Outlook Crystal Reports LEDES Electronic Exchange	Free Built-in Timeslips conversion Seamless QuickBooks Integration LEDES Electronic Exchange Excel Import/Export Custom Conversion	Access via all web browsers Native mobile apps for iOS, Android and Windows8 Phones Web access via tablet devices	Unlimited email, web-based and phone support included in all plans. Free access to monthly training webinars Free access to Knowledgebase Support hours: 7:00am – 3:00pm Pacific Time
PCLaw	Including first year maintenance plan: 1 st User: \$950 Add'l users: \$455 Without first year maintenance plan: 1 st User: \$600 Add'l users: \$400 (more info)	Workstation: Windows 2000, XP, Vista, 7 Server: Windows 2000, Windows 2003 Server (more info)	Time tracking, billing, accounts receivable, integrated credit card processing, trust accounts, ledgers, comprehensive reporting, integrated payroll (more info)	Flat fee, task-based, split, contingency, retainer, electronic billing. (more info)	LexisNexis Total Practice Advantage, Time Matters, Amicus Attorney, PCLaw Timer, LexisNexis Research Microsoft Small Business Accounting (more info)	Free utilities and paid services offered to ease transition. Data has been converted from QuickBooks, Timeslips, Compulaw, Esilaw, Manac, and Tabs3. (more info)	PCLaw Travel Edition module for Palm OS 3.5+, BlackBerry OS 4.0+ (more info)	Online support provided via LexisNexis Total Practice Solutions Support Center. (more info)

Tabs3 Billing	<p>\$674 (two attorneys) \$1340 (five attorneys)</p> <p>To request a custom quote, visit our pricing page (more info)</p>	Tabs3 and PracticeMaster Software is compatible with all supported versions of Windows and Windows Server.	<p>Time tracking, accounts receivable, credit card processing, robust reporting.</p> <p>Integrated trust accounting, general ledger, and accounts payable software available (more info)</p>	Hourly, flat-fee, contingency, UTMBS/electronic billing, split-fee, retainer, task based billing, pro bono, billable, non-billable	Tabs3 financial software, PracticeMaster, QuickBooks (more info)	Some free utilities are available and paid services are offered to ease transition. For more information, please call our Technical Support at (402) 419-2210.	Tabs3 Connect is available for those who use the Platinum version of both Tabs3 and PracticeMaster.	Free knowledgebase, free telephone support for the first year, annual maintenance plan available which includes unlimited telephone support and free updates.
Time and Billing	\$25/user/month	<p>All operating systems</p> <p>Time and Billing is web-based and will work on Mac and PC</p> <p>All browsers are supported</p>	<p>Time/expense tracking, online invoicing, trust accounting, online bill pay</p> <p>(more info)</p>	Preloaded ABA Billing codes, hourly, flat-rate and retainer billing options, trust accounting, billing by client, matter, activity and firm member, invoicing, batch invoicing, time tracking, trust accounting, online bill paying, custom codes, LEDES 1998B Format	Firm Central Microsoft Outlook	Pre-existing database conversion is possible in most cases. Call 1-888-287-8537 for more information	<p>Native App for iPhone/iPad and Android</p> <p>Desktop Widget for Mac and PC to track time when offline</p> <p>Convert your emails and calendar events into time entries from Microsoft Outlook</p>	

LexisNexis Firm Manager	30 Day Free Trail	Web-based, accessible from any device with an internet connection	Quickly search for matter information with Contacts, Matters, Calendars, Tasks, Documents, and Billing all in one place	Track your time and bill up to 40% more	Sync with QuickBooks, QuickBooks Online, Google Calendar, and MS Office 365 Calendar integrations	Web-based, accessible from any device with an internet connection	Unlimited 24/7 technical support included with monthly subscription	
	<p>Thereafter, Monthly Subscription:</p> <p>- Starter Package \$29/month/user</p> <p>- Essentials Package \$44/month/user</p> <p>Get 20% Off with Purchase (more info)</p>	Runs in web browsers like Google Chrome, Microsoft Edge, Internet Explorer, Mozilla Firefox, and Apple Safari	<p>Don't miss another meeting with Google™ and Microsoft® Office 365™ Calendar Syncing</p> <p>Never run out of storage space with unlimited online storage</p> <p>Simplify the matter intake process with custom matter templates and checklists for a fast, easy, pragmatic planning experience</p> <p>(more info)</p>	<p>Ensure accurate Trust Accounts for more peace of mind</p> <p>Streamline bookkeeping with QuickBooks integrations</p> <p>Track productivity and transaction history with billing dashboards and reports</p> <p>Give the right access to the right people on your team with role- based permissions</p> <p>(more info)</p>	<p>Import Contacts and Matters</p> <p>Upload Documents and Folders</p> <p>Export Contacts, Matters, Custom Data, Notes, Tasks, Time and Expense, and Invoices at any time</p>	Mac, PC, Tablets or Smartphones.	Support is available via phone, online chat, email, online knowledge base, and LexisNexis University training videos	

<p>Sage Timeslips</p>	<p>1 user: \$519.99 Additional workstations: \$295.99 each</p> <p>For more than 10 additional workstations, call Sage Timeslips at 877-816-7829. Includes 30 days of support starting from date of purchase – new customers only</p> <p>On-demand test drive is available.</p> <p>(more info)</p> <p>ABA members save 15% on Timeslips through ABA Member Advantage.</p>	<p>Windows 8, 7 Ultimate or Professional, Windows Vista Business or Ultimate, Windows XP SP3</p> <p>(more info)</p>	<p>Time/expense tracking, automatic time capture, calendar sync, bill generation, accounts receivable, report design & customization, scheduled backups, alerts, custom fields, networking options.</p> <p>(more info)</p> <p>Various add-on products available.</p>	<p>Industry standard electronic billing formats are supported, including LEDES 98B and Litigation Advisor, billing administrators may choose if a slip requires approval before being invoiced to the customer, A/R reports included with the invoicing software and integrate with 20 software packages including QuickBooks, Sage 50 Accounting and practice management software packages, define aging periods, allocate payments to timekeepers, set up discount rules for early payments.</p> <p>(more info)</p>	<p>QuickBooks, Sage 50 Accounting, Microsoft Outlook, Excel, Time Matters, Amicus Attorney and more.</p> <p>(more info)</p>	<p>Built-in data import feature can import data from delimited text files.</p> <p>(more info)</p> <p>Tools offered for conversion of older Timeslips databases. Conversion from other databases may be possible via Timeslips Certified Consultant.</p> <p>(more info)</p>	<p>Sage Timeslips eCenter is a Web-based time and expense entry portal that works with any mobile device with an Internet connection, including laptops, smartphones, Apple Macs and iPads and tablets. Available as a monthly subscription per license.</p> <p>(more info)</p> <p>Enter time from any web-connected computer using Timeslips eCenter add on.</p> <p>(more info)</p>	<p>Free technical support for 30 days.</p> <p>Basic and premium support plan options available.</p> <p>Knowledgebase and community assistance is available through Sage City or the Sage Timeslips LinkedIn user group.</p> <p>(more info)</p>
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TimeSolv Legal	<p>\$35.00 per timekeeper/per month or \$29 per user/month with an annual plan. No charge for non-timekeepers.</p> <p>Includes initial setup, support and one-on-one online Training. Discounts available for 10+ users</p> <p>(more info)</p>	<p>Windows XP, Vista, Macintosh, Linux, Unix, etc.</p> <p>Software is browser based and not subject to specific operating system.</p> <p>Browsers: Internet Explorer, Firefox, Safari, Chrome (more info)</p>	<p><u>Billing</u> LEDES billing, batch bill creation, consolidated billing, multiple flexible billing templates, five bill delivery options, online bill presentment and credit card payments</p> <p>Narrative replacement codes for quick notes entry, multiple timers, ABA UTBMS codes</p> <p><u>Accounting</u> Accounts receivable, trust accounting, financial reports, auto reports, project management, conflicts management, approval workflow.</p> <p>(more info)</p>	<p>Hourly by timekeeper/task, flat fee, contingency, global rates, matter specific rates, time entry specific rates, LEDES billing, outsourced billing, print and mail service.</p> <p>Additional electronic billing formats available for insurance companies, such as Chubbs, Litigation Advisors, etc.</p> <p>(more info)</p>	<p>Quickbooks, MYOB AccountEdge, CSV Export, PayPal</p> <p>WorkTRAKR for automatically capturing time from phone calls and emails</p> <p>(more info)</p>	<p>Quickbooks CSV files from all accounting systems including Timeslips.</p> <p>No charge for data conversion and help with data upload.</p> <p>(more info)</p>	<p>Mobile Web Access through TimeSolv Mobile at no charge.</p> <p>Supported devices include</p> <ul style="list-style-type: none"> * iPhone * Blackberry * Windows Mobile * Palm <p>Laptop based mobile access through TimeSync, a desktop application for tracking time and expenses.</p> <p>(more info)</p>	<p>Toll Free Telephone and Email support included in subscription. Response time of less than 2 hours. Support personnel located in the US.</p> <p>Includes free one-on-one online training, initial setup and configuration.</p> <p>Support hours: Email 8 AM to 10 PM EST Monday-Sunday Telephone 9 AM to 8:30 PM Monday-Friday</p> <p>Online support site available for self help. (more info)</p>

TurboLaw Time and Billing	<p>\$79 per month per user. \$19 per month for each additional license. Volume discount available for 5+ licenses. No contract term.</p> <p>Free trial available.</p>	<p>Microsoft Windows 7, Windows 8, Windows 8.1, or Windows 10. Microsoft .NET Framework 4.0 or higher (TurboLaw Time & Billing setup downloads and installs this automatically). At least 70 MB of free disk space to install. An active Internet connection is required for setup, updates and activation. A high-speed Internet connection is highly recommended.</p>	<p>Time keeping, payment entry, stop watch, bill creation, account history, financial reports, LEDES billing, client/staff information entry (including billing rates), application of finance charges, dozens of customizable bill/statement templates, multiple matter support, IOLTA reconciliation,</p> <p>(more info)</p>	<p>Custom interval, hour, half hour, quarter hour, tenth hour, exact time, flat fee.</p> <p>(more info)</p>	<p>Microsoft Outlook, TurboLaw Document Software PDF (built in), HTML, Text, CSV, MHT, Excel, RTF, Image (BMP, GIF, JPEG, PNG, TIFF, EMF, WMF)</p> <p>(more info)</p>		<p>The Cloud and Mac version are web based and can be used with any mobile device with an Internet connection, including iPads, laptops, smartphones, Macs and tablets.</p> <p>(more info)</p>	<p>Unlimited support including US based toll free phone support and email for active subscribers. Free training webinars and help center also available.</p> <p>(more info)</p>
BillingTracker Pro		<p>Windows XP/Vista/7/8</p>	<p>Time tracking, billing, expenses, accounts receivable, detailed reporting, online backup, alerts, unpaid bills tracking (ageing)</p>	<p>Hourly, flat fee, contingency, retainer, recurring, billable/non-billable</p>	<p>Exports statements and reports to PDF, RTF (can be opened by Word), and CSV (can be opened by Excel)</p>		<p>Online backup of data file can be accessed by any Windows laptop so user can work while outside of office.</p>	<p>Total Care subscription provides technical support, new versions of the software, replacement registration codes, and online backup of data file. Online backup can be encrypted.</p>

CoCounselor Plaintiff's Software	CoCounselor plaintiff software from \$70/ month/ user; No long term contract or set up fee required.	CoCounselor is completely Cloud-based, so the only requirement is a device with a web browser and internet connection. No server or software installation necessary.	Case, matter, email, contacts, and calendar management; Document generation; Alerts and reminders; Task management; Calendaring	Expense tracking, Robust Reporting including Dashboard visualizations, Case Status changes	Expense tracking, Robust Reporting including Dashboard visualizations, Case Status changes	Features a built-in integration with Google Drive for document storage. Integrations also available for Outlook, Gmail, and Google Calendar. Company and contact import offered as part of the onboarding process. Manual Data Entry also offered at \$15/hr.	CoCounselor's layout is highly responsive, meaning that it is equally accessible via your web browser on any PC, Mac, tablet, or mobile device.	CoCounselor includes unlimited free email and phone support, as well as remote desktop assistance, 8AM-6PM EST Monday through Friday.
Time59	\$99.95/YEAR Unlimited Data, Unlimited Users. 30 day free trial, no credit card required. (https://www.time59.com/pricing.asp)	100% web-based. Runs on any computer, phone, or tablet with a browser and an internet connection.	Time and Expense tracking. Time and Expense reports.	Invoicing. Accounts Receivable. Trust accounting. Automatic interest generation. Lawpay integration. LEDES invoicing. Comprehensive reporting.	Lawpay integration. No other automated interfaces.	Works in the web browser of all Apple and Android phones and tablets.	Free unlimited technical support via phone or email.	

Centerbase	<p>\$52 per user/month billed annually</p> <p>Additional service charges for implementation & data migration.</p>	<p>Web-based, requires Chrome, Firefox IE, or Safari.</p> <p>PC or Mac.</p>	<p>Fully customizable client, contact and matter management with editable workflow engine, document management (starting at 5 TB space), form document generation, firm-wide calendaring/project management, conflict checking, user defined metric dashboard.</p>	<p>Time & expense tracking, billing, accounts receivable, trust accounting (IOLTA), user and firm-wide reporting, configurable revenue & commission reporting, matter budget tracking, credit card processing, QuickBooks integration.</p>	<p>Integrations with: QuickBooks (real-time), LinkedIn, MS Outlook, MS Word, Stripe, VoIP telephony.</p> <p>Centerbase performs full data migration for customers from any PC or Web-based products - no technical assistance needed.</p>	<p>Centerbase native app included for iPhone and Android</p>	<p>Live unlimited U.S. based phone, e-mail and web support.</p>	
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Unresolved Trauma in Adults Involved in Child Welfare Cases: Identification and Strategies

Julianne Ludlam, Ph.D.

KKJ Forensic & Psychological Services

1. Background on trauma

- Defining trauma and trauma-related disorders
- Prevalence of trauma-related disorders
- ACE studies, brief background and findings
- The trauma response: Impact on brain and behavior
 1. Fight, Flight, Freeze – the acute stress response
 2. Normal processing vs. threat processing; long-term impact

2. Reactions to trauma

- Behavioral changes caused by trauma
- Short and long-term consequences for individuals
- Indicators of untreated trauma in adults
- Specific effects of untreated trauma on parents

3. Trauma-informed practice

- A shift toward a trauma-informed child welfare model
- Definition of trauma-informed practice
- Trauma-informed legal representation
 1. Identifying trauma
 2. Adjusting the attorney-client relationship
 3. Adapting litigation strategy
 4. Preventing vicarious trauma

4. Treatments for Trauma

- General goals and specific therapies recommended

Resources

Fact sheet: National Child Traumatic Stress Network, Child Welfare Committee. (2011). Birth parents with trauma histories and the child welfare system: A guide for judges and attorneys. <https://www.nctsn.org/>

Treatment:

- Stress, Trauma, & Recovery Treatment (START) Clinic: <https://sites.duke.edu/trauma/>
- Carolina Outreach: <https://carolinaoutreach.com/>

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TRAUMA:

What Child Welfare Attorneys Should Know



EXECUTIVE SUMMARY

Each year, over 45 million children in the United States are affected by violence, crime, abuse, or psychological trauma.¹ Trauma exposure can significantly interfere with the way children's brains assess threat, which in turn can affect how they respond to stress. The negative impact of trauma exposure is particularly relevant for children and families in the child welfare system, as the majority of child welfare-involved clients have experienced multiple traumas, including abuse, neglect, and exposure to domestic violence. By understanding the impact of trauma on youth and families, and incorporating trauma-informed skills into legal advocacy, attorneys representing children or parents in child welfare cases can improve outcomes for their clients.

This document is intended to provide you with knowledge about the impact of trauma, practice tips for incorporating trauma-informed practices into legal representation, and resources to assist in the representation of clients with histories of trauma. Its intent is to guide you in your representation of clients, with the understanding that not all suggestions will be applicable or appropriate in all cases.

Trauma-informed legal practice can strengthen legal advocacy, improve attorney-client relationships, and ensure appropriate screening, in-depth assessment, and evidence-based treatment. In addition, awareness of secondary traumatic stress can improve prevention, identification, and self-care among legal professionals.

Below is a summary of tips that may assist you in incorporating trauma-informed skills and principles into your everyday practice. More detailed information about each of these tips can be found in the document that follows.

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PRACTICE TIPS

General Tips for Representing Clients in Child Welfare Cases

- Identify known or suspected trauma the client may have experienced.
- Consider the role trauma exposure may play in a client's behaviors, including refusal to engage in treatment, missing court appearances or appointments, as well as exhibiting hostility, apathy, or defiance during court proceedings. These behaviors could be misinterpreted signs of an alarm reaction or trauma response.
- Provide structure, predictability, and opportunities for the client to exert control over decisions as appropriate.
- Provide adequate explanation to the client about his case, including your role as the attorney, a reasonable understanding of the purpose of court proceedings, and a realistic expectation of the potential outcome of court proceedings.
- Advocate for placement stability for children. When placement change is necessary, advocate for a planned transition that occurs gradually rather than abruptly.
- Advocate for visitation to begin immediately between child and parent, unless this poses a threat to the child's physical or psychological safety or the child does not want visitation.
- Support visitation that is intentional, well-planned, and held in a neutral location away from where the trauma occurred. Make every effort to prepare the child for visitation.
- Encourage continuity of treatment after transitions and collaboration among professionals providing services for the client.
- Promote client resilience by leveraging existing social supports, advocating for client involvement in services and activities that increase a sense of mastery and competence, and making referrals for trauma-informed mental health treatment when appropriate.

Trauma Screening, Assessment, and Treatment

- Advocate for universal screening of trauma exposure and related symptoms.
- Provide universal in-depth assessment for those children and parents for whom a screening identifies a history of trauma.
- Make referrals or advocate for appropriate trauma treatment for clients affected by trauma exposure. Not all mental health providers are trained to provide evidence-based trauma treatment, so it is important to identify the type of treatment offered.
- Coordinate with a client's existing therapist to ascertain information about trauma triggers, suggested steps for ameliorating trauma triggers, the treatment being provided, and any other relevant information, such as risk for self-harm.

Attorney-Client Relationship

- Consider issues of physical and psychological safety when advocating for clients and resist practices that may re-traumatize children and parents.
- Meet in a quiet space with minimal distractions and outside the presence of other parties who may contribute to the client feeling threatened.
- Provide adequate information about the attorney-client meeting, including the purpose of the meeting, expectations for the meeting, and length of the meeting.
- Provide a thorough explanation about the court process, including the purpose of each court hearing, the information that you will present in court, and potential questions that the judge or attorneys may ask of the client. Allow the client time to practice and role-play responses.
- Be alert for signs of a trauma reaction, which typically present as some variation of the fight, flight, or freeze response. These signs may include lashing out, shutting down or withdrawing, or regressive, defiant, or disrespectful behaviors.
- Try to avoid startling the client with loud noises, sudden movements, or unexpected news without adequate explanation or preparation.
- Minimize touching the client, which can trigger a reaction in individuals with histories of physical or sexual abuse.
- Avoid overpromising or telling the client that “everything will be fine.” Clients may be triggered by feeling let down or misled by their attorney.

Secondary Traumatic Stress

- Maintain work environments for staff that increase resilience and acknowledge, reduce, and treat vicarious or secondary traumatic stress.
- Identify and engage in self-care on an individual and organizational basis.

TRAUMA:

What Child Welfare Attorneys Should Know

1

Defining Trauma-Informed Legal Advocacy

In 2014, more than 700,000 children in the United States were exposed to child maltreatment and more than 400,000 children were residing in foster care.¹ Children in foster care are likely to have been exposed to multiple forms of trauma, such as physical or sexual abuse, neglect, family and/or community violence, trafficking or commercial sexual exploitation, bullying, or loss of loved ones.² In addition to situations of abuse or neglect that lead to their removal from their homes, children in care may experience further stresses after entering the system. Separation from family, friends, and community is often referred to as system-induced trauma.

The majority of parents or caregivers involved in the child welfare system have also experienced trauma and many were maltreated or placed in foster care as children. Addressing trauma among families involved in child welfare is essential to stopping this cycle of maltreatment. Without proper intervention, the negative effects of childhood trauma may persist into adulthood, and can result in higher rates of psychiatric or medical illness, substance use, criminal offending, and early death.³

The Attorney General's National Task Force on Children Exposed to Violence¹ recommends that all professionals serving children exposed to violence and psychological trauma learn about and provide for trauma-informed care and trauma-focused services. Similarly, the American Bar Association has called for integrating trauma knowledge into daily legal practice and integrating and sustaining trauma awareness and skills in practice and policies.⁴

Trauma-informed systems are structured with an understanding of the causes and effects of traumatic experiences, and incorporate practices that support recovery.⁵ A system-wide approach requires involvement by all stakeholders working with children and their families, including caseworkers, attorneys for all parties, judges, service providers, birth parents, and caregivers such as foster parents and kinship caregivers.

By enhancing the ability to recognize the impact of trauma, respond appropriately, and avoid legal practices that may re-traumatize children or parents, trauma-informed legal representation can support recovery and enhance resilience, thus improving outcomes for children and families. Incorporating trauma-informed skills into legal practice can also improve attorney-client relationships, increase opportunities to advocate for appropriate services, and enhance prevention, recognition, and mitigation of secondary traumatic stress (STS; see [Section Eight](#)).

Trauma-informed legal representation may include:

1. Identifying all known and suspected trauma the client may have experienced
2. Understanding parent and caregiver trauma and its impact on the family
3. Considering the legal implications of routine screening for trauma exposure and related symptoms, particularly for parents and dual-system involved youth ([see Glossary](#))
4. Making appropriate referrals for culturally sensitive, evidence-based assessment and treatment for traumatic stress and associated mental health symptoms
5. Advocating for provision of resources (e.g., [psychoeducational books](#), [victim assistance information](#)) about trauma exposure, its impact, and treatment for children, families, and stakeholders
6. Understanding and promoting resilience and protective factors for children and their families
7. Encouraging continuity of care and collaboration across child-serving systems
8. Maintaining work environments for staff that increase staff resilience and address, reduce, and treat vicarious or secondary traumatic stress
9. Considering issues of physical and psychological safety when advocating for clients and resisting practices that may re-traumatize children and parents
10. Maintaining awareness of one's own behaviors, tone of voice, body language, and approach when engaging and questioning clients who may have a history of trauma
11. Taking steps to make clients more comfortable and to recognize when clients are having a trauma reaction
12. Engaging in continuing education about trauma to learn new and developing information that can benefit clients

These suggestions identify actions you can take to promote a trauma-informed response to your clients, *with the understanding that the confines of professional conduct, including confidentiality and ethical considerations as well as strategic case planning, may affect one's ability to act on these recommendations in individual cases.* In addition, advocates should always clearly explain their role to child clients, whether they are representing the client's expressed wishes as an attorney, best interest as *guardian ad litem*, or taking a hybrid approach.

By keeping these principles in mind, you can build more effective relationships with your clients to serve their legal interests, work to ensure necessary service needs are met, and support clients' current and future well-being.

2

The Impact of Trauma Exposure on Child Development

Approximately 80 to 90 percent of youth involved in the child welfare system have experienced at least one traumatic event.⁶ Trauma may result from either direct experiences, such as being neglected or abused, or witnessed experiences including domestic violence between caregivers. Children may also be traumatized by hearing about something that happened to their parent or caregiver (e.g., [serious injury, incarceration](#)).⁷

Traumatic experiences early in life may alter how the brain assesses threat and how clients respond to stress. A fight or flight response may be "triggered" by anything that reminds a client of past traumatic events, causing a perception of immediate danger. A triggered youth or adult may engage in aggressive or avoidant behaviors in an effort to feel safe; behave defiantly or aggressively to keep others at a distance; or attempt to escape the situation. Common responses include running away from home or school; avoiding attorneys or court hearings perceived as threatening; shutting down; or "spacing out."

There are a range of potential reactions to traumatic events. Most trauma survivors, including youth in the juvenile justice system or parents accused of maltreatment, will recover from their experiences and thus should not be viewed as "damaged" or beyond help. Trauma's impact on the brain and normal child development can be reversed with appropriate treatment and other supports (see [Section Six](#)). Recovery is related to resilience; and attorneys can promote clients' resilience in a number of ways, listed below.



PRACTICE TIPS: PROMOTING CLIENT RESILIENCE

Leverage existing social supports – immediate and extended family, fictive kin ([see Glossary Terms, page X](#)), community and religious leaders, school staff, coaches, etc.

Advocate for clients' involvement in services or activities that increase their sense of mastery or competence, such as parenting classes/training for caregivers, or afterschool activities for children and youth.

Support clients in developing effective coping skills by referring them to trauma-informed treatment as indicated, and helping them cope with potentially distressing court proceedings or transitions by adequately explaining them in advance.

While many youth and adults who experience trauma are able to work through subsequent challenges without professional intervention, some will develop symptoms of Posttraumatic Stress Disorder, or PTSD ([see Glossary Terms, page 6, for definition](#)). PTSD increases the risk for negative outcomes across the lifespan, including academic challenges and peer problems in childhood and criminal justice involvement in adolescence and adulthood. ([See Appendix, Section Two, for additional resources on how trauma may affect clients in different age groups.](#)) Some clients may experience partial symptoms of PTSD or develop other disorders such as substance use, depression, or anxiety.

Many trauma survivors will not meet criteria for a PTSD diagnosis but will experience significant trauma-related impairment in daily living. Youth or adults with more chronic or pervasive exposure to traumatic events, termed complex trauma, may suffer additional challenges that are not captured by the PTSD diagnosis ([see Glossary Terms](#)). Whenever possible, clients should be screened. If a trauma screen reveals trauma exposure, a further in-depth assessment for trauma exposure and related symptoms to determine the impact of their traumatic experiences and need for appropriate treatment is warranted ([see Section Five](#)).

Approximately 90 percent of parents or caregivers involved in the child welfare system have histories of trauma exposure, including high rates of childhood abuse and neglect, and a significant number were involved in the system as children.^{8,9,10} Additionally, families may be affected by historical trauma resulting from societal racism and oppression towards ethnic minorities, particularly African-American, Native American, and immigrant communities. The impact of these traumatic experiences on both caregivers and their children can be inadvertently intensified by institutional practices within systems such as child welfare or juvenile justice.¹¹

Exposure to trauma does not always determine adverse outcomes for parents and their children. However, for some parents, prior trauma exposure may negatively impact the manner in which they interact with their children, thereby placing children at higher risk for traumatic stress. This is also known as intergenerational trauma. For example, parents with histories of repeated exposure to violence may have greater difficulty recognizing the adverse effects of violence exposure for children. Untreated PTSD can also interfere with a parent's ability to use safe and effective parenting strategies and protect their children from abuse by others.^{12,13} In turn, without effective intervention, children exposed to neglect or abuse are significantly more likely to perpetrate violence against dating partners, enter into abusive relationships in adolescence and adulthood, and perpetrate abuse of their own children when they become parents.^{14,15,16} Consequently, addressing traumatic stress within families in the child welfare system is essential for reducing rates of child maltreatment and interrupting the intergenerational transmission of trauma. Further, recognition of these risks can position attorneys to recommend resources to clients that lessen the impact of risks and bolster clients' resiliency.

Trauma can affect a parent's approach to discipline and child-rearing.

Parents with trauma histories who abuse or neglect their children may view their parenting behavior as normal, and may not understand that there are alternative ways of interacting with their children. Additionally, a traumatized parent may be hypervigilant or overly focused on identifying potential threats to his or her child. Hypervigilant parents may react harshly to child misbehavior because they fear consequences or reactions from others if their children continue to misbehave. Parents with trauma histories may also place extreme restrictions on their children, such as requiring them to spend all free time at home to avoid potential danger. Trauma can also deplete a parent's psychological and physical energy as well as the financial and social resources necessary to accomplish parenting tasks.

After a client-centered decision-making process that includes legal counseling of the client, parent attorneys can advocate for participation in trauma-informed parenting workshops and treatment (see [Section Six](#)). Since reunifi-

GLOSSARY OF TERMS

Trauma

Exposure to actual or threatened death, serious injury or violence in one of the following ways: 1) direct experience; 2) witnessing a traumatic event; 3) learning that a loved one experienced trauma; or 4) repeated or extreme exposure to aversive details of traumatic events (e.g., child welfare attorneys who develop secondary traumatic stress after repeated exposure to their clients' trauma stories).

Child Traumatic Stress

Occurs when a child experiences a traumatic event or situation that upsets and overwhelms his or her ability to cope; and the signs and symptoms interfere with the child's daily life.

The Body's Alarm System

Function of the brain that scans the environment for potential danger and prepares us to act. When triggered, the alarm system sets off a cascade of immediate physiological changes that prepare one for Fight-Flight-Freeze response in order to stay safe. This is a complex response that involves multiple areas of the brain, including the sympathetic nervous system and the amygdala.

Trigger

A reminder of a past traumatic event that sets off the body's alarm system, so that the person feels in imminent danger once again. A "trigger" can be anything connected to a traumatic event, including an event, situation, place, physical sensation, or even a person.

Posttraumatic Stress Disorder

A mental health disorder most commonly associated with trauma exposure. PTSD is characterized by problems in four areas: re-experiencing (i.e., flashbacks or nightmares of traumatic event); avoidance of thoughts or reminders of past trauma;

cation is the ultimate goal in most child welfare cases, and most children in the child welfare system reunify with their biological families¹⁷; it is essential that parents and caregivers receive needed trauma-informed services in order to begin the healing process and improve their capacity to provide safe and stable home environments.

Trauma can affect parental reactions to court proceedings and an attorney's working relationship with the parent.

For parents or caregivers with histories of trauma, child welfare proceedings may present particular challenges that can significantly interfere with their ability to effectively manage court proceedings and relationships with court and child welfare professionals. Parents who have experienced trauma may exhibit difficult behaviors such as angry outbursts, lateness, refusal to return phone calls, and missed appointments or court appearances. One study of child welfare-involved mothers also found that those who had previous involvement with the system as children were significantly less engaged with services provided through child welfare agencies.¹⁸ These behaviors may be interpreted as hostility or apathy, but may in fact be symptoms of traumatic stress. Traumatic stress pushes the brain into a hypervigilant mode that may cause individuals to be highly sensitive to power differentials, perceived attacks, and a perceived loss of control. This may result in a parent's distrust of, and irritability toward, those who appear more powerful and in control, such as attorneys, judges, and child welfare caseworkers.^a In such cases, parents may need additional support to help them understand those reactions, and the impact of those reactions on the overall case. Lifelong traumas may also teach ineffective ways to assert power in the world. It is understandable for parents to exhibit distrust of a system that may have been unhelpful, even harmful, in the past, especially if they have lived in poverty and have dealt with structural racism in the very systems designed to help them. Understanding these reactions can help you develop a more effective attorney-client relationship.

^aTraumatic stress may decrease a parent's ability to perceive the world accurately, process information, remain organized due to executive function deficits, and increase risk of substance use. In turn, this may contribute to an increased risk of maltreating their children.

negative changes in thought or mood (i.e., persistent negative emotions, persistent or exaggerated negative beliefs about one-self, others, or the world); and hyperarousal (angry outbursts, being constantly "on guard" against potential threats). Some people may also experience dissociation. (See Appendix Section Two for additional information).

Complex Trauma

Refers to exposure to multiple or prolonged forms of traumatic experiences in childhood and the wide-ranging, long-term impact of this exposure. Complex trauma disrupts normal child development and may lead to difficulties with attachment (i.e., ability to form trusting, meaningful relationships); managing emotions and behavior; and executive functioning (i.e., ability to focus attention, solve problems, plan or pursue long-term goals).

Kinship Foster Care

Refers to the placement of youth in foster care that is provided by grandparents, aunts, uncles, or other family members.

Fictive Kin

Individuals who play an important role in a youth's life but are not related through marriage or birth.

Dual-System Involved Youth

Refers to youth who are involved in both the child welfare and juvenile justice systems.

Psychological Safety

The belief that one is safe from emotional harm and has the ability to manage threats to safety. Psychologically safe environments encourage respect for others' feelings, even when there is disagreement. Individuals can also increase their own sense of psychological safety in stressful situations by learning and using coping skills.

Dual-System Involved Youth

Youth involved in both the child welfare and juvenile justice systems)



Trauma can interfere with the formation of strong client-attorney relationships by impairing the client's capacity to trust others, process information, communicate, and respond to stressful situations. Understanding trauma's impact on behavior can help you modify your approach with traumatized clients, prepare clients for court proceedings in a way that reduces their likelihood of a traumatic response, and advocate for clients in a way that empowers them and helps build a sense of safety and resiliency. With adequate preparation, clients may feel empowered by the opportunity to tell their stories and receive empathy and effective support from the professionals involved.

To establish an effective working relationship with traumatized clients, you should focus on physical and psychological safety, communication, and client support.

Physical and psychological safety:

When a client is reminded, either consciously or unconsciously, of a past trauma, that trigger may cause the client to feel as if she is in imminent danger. When traumatized clients feel physically or psychologically unsafe, they may become focused on protecting themselves and avoiding the perceived danger. As a result, they may not listen to or process information accurately, may refuse to talk, or simply agree to anything in order to leave. You can assist your client and establish a safe environment by providing structure and predictability, allowing the client to make informed decisions about his or her case whenever possible.

Court hearings and other procedures in the child welfare system may inadvertently trigger or re-traumatize clients with trauma histories. For example, clients are frequently triggered by a perceived loss of control or power, such as court decisions made about placement or visitation. Therefore, you should give clients a clear voice in decisions related to their representation, elicit their views, and seek active, age-appropriate involvement.

When triggered, clients may react in ways that are misinterpreted by the court. For example, a child may withdraw emotionally or physically (*often described as freezing or shutting down*) in response to questions about desire for contact with a parent. Or, a parent with a trauma history may shut down or react defiantly during cross-examination. A child placed in foster care, particularly an adolescent, may run away or act out in response to conflict with a foster parent or group home staff member. Judges, attorneys, and other professionals may view such a client as uncooperative or disinterested rather than as someone who is having a trauma response. You can advocate for clients by explaining to the court and the other parties that the client's behavior is a reflection of underlying trauma. Decisions regarding such disclosures should be case-specific and within the bounds of attorney-client privilege and your specific attorney role.

Some suggestions for increasing physical and psychological safety include:

- Meet in a quiet space where there are minimal distractions, away from other parties who may make your client feel threatened.
- Inform the client of the purpose of that day's meeting, what to expect during the meeting, and how long the meeting will last. Several shorter meetings can build familiarity and be more productive than a single, longer meeting. Make sure to ask what questions the client may have.
- Explain the court process. Let the client know what you are going to say in court, questions you may ask the client, and questions the judge or opposing attorney may ask (particularly when you anticipate an adversarial cross-examination). Knowing what to expect can help your client feel less anxious during a hearing. Allowing the client time to practice responding and role-playing can increase a sense of control and safety.

As part of explaining the court process to child clients, it is also important to provide a realistic understanding of the potential outcomes of a court hearing. It can be empowering for child clients to know that their attorney is listening to them and will express their wishes in court, but it is also important for them to be prepared for the possibility that those wishes may or may not be granted or taken into consideration.

Additionally, when child clients are not present for court hearings, it can be triggering for them to know there was a court date but not be informed about what happened at that hearing. Children and youth should attend their own hearings whenever possible. When their presence is not possible, it is important to provide information about what happened or some type of update in an age-appropriate manner.

Communication:

Clients who have experienced trauma may experience greater difficulty forming trusting relationships with their attorneys. Many youth in the child welfare system have been hurt by a caretaker or authority figure they trusted, and many parents distrust “the system.” Such clients may not believe that you will actually advocate for them. Clients also may be slow to share emotionally-charged information, or may not feel safe expressing preferences regarding their desired outcomes, such as visitation or placement. Developing an effective attorney-client relationship takes time and patience.

You can learn to recognize signs that a client may be experiencing a trauma reaction so that you do not misinterpret or exacerbate the client’s response. Trauma reactions typically represent some version of fight, flight, or freeze. A client who suddenly becomes loud or combative may be going into “fight mode” in order to keep herself safe by pushing others away. Clients may go into “flight mode” and try to avoid a triggering situation by refusing to answer sensitive questions or attempting to leave a meeting or court hearing. Clients may also “freeze” by shutting down or dissociating (*a common response to trauma when a person mentally shuts down or “goes elsewhere”*). She may sit quietly but will no longer be paying attention. Do not assume that silence means the client understands or consents. (*Appendix Section Four includes information about identifying signs of trauma reactions in clients.*)



PRACTICE TIPS TO AVOID TRIGGERING CLIENTS WITH PRIOR TRAUMA

Look for signs of trauma reactions. As discussed in this section, clients may exhibit variations of the fight, flight, or freeze response.

Try not to startle the client. Loud noises (*including yelling*), sudden movements (*jumping up from a chair*), or unexpected news can all trigger trauma responses.

Prepare the client for what is ahead. Predictability is important to establishing a trusting relationship. Preparation can help minimize your client’s hypervigilance to threats from unfamiliar or unexpected sources.

Minimize touching the client. You may intend to be supportive when you put your arm around a child or touch a parent’s shoulder, but that can trigger a reaction in people who have been physically or sexually abused. By respecting your client’s personal space, you can help build the client’s sense of control and safety.

Do not overpromise or tell the client “everything will be fine.” This includes promising clients you will always be there for them. Attorneys frequently change. Be honest in your communications because clients may be triggered by feeling let down or misled by their attorney. Remember that clients’ behaviors may also be influenced by the expectation that you will inevitably disappoint them, so be honest and forthright from the start.

^b Child participation in the court process is considered a best practice by national organizations such as the American Bar Association, National Council of Juvenile and Family Court Judges, and National Association of Counsel for Children. A study in Nebraska found that children’s anxiety levels related to court participation were low overall and even lower for children who had attended court. The children who attended court also viewed the judgments as more fair. A recent New Jersey study showed that court participation is not upsetting for youth, but can provide an opportunity for them to be heard. It also provides better information to both the youth and the court.¹⁹

Client support:

Parents and children who are involved in the child welfare system may still have strong attachments to and pleasant memories of family members. In fact, a child can remain emotionally attached to a dysfunctional family and may be further traumatized by complete loss of contact with relatives. Family members can offer the best source of long-term support for a traumatized child. It is essential that a child stay connected with siblings, relatives and extended family (as defined by the client), and friends. In cases in which ongoing family contact is not feasible or is contraindicated for safety reasons, you can look for ways to involve other people trusted by your client, such as a family friend, coach, teacher, or pastor.

Finally, you should be aware that some clients may find the experience of court involvement traumatizing, whether from memories of past involvement, interactions with or observations of others in the courthouse, and especially the intensity of the courtroom environment itself. Trauma triggers might include an attorney's behaviors, tone of voice, body language or approach to questioning. You can take steps to make your clients more comfortable and to recognize when clients are having a trauma reaction.

POSSIBLE SIGNS THAT YOUR CLIENT HAS BEEN “TRIGGERED”

- Lashes out verbally or physically
- Becomes defiant, disrespectful
(*fight response meant to keep potential threats at a distance*)
- Has difficulty tracking the attorney's questions
- Shuts down, stops talking
- Becomes jumpy, fidgety, starts pacing
- Has sudden, dramatic shifts in mood
- Looks spaced out, gets lost in conversation, or appears to have “gone somewhere else”
- Speech grows louder, faster
- Suddenly tries to leave situation
(*flight response*)
- Adopts regressive behaviors
(*thumb sucking, rocking*)

Client Resiliency:

It should be noted that despite trauma histories and traumatic stress reactions, clients are often resilient. Your actions during the course of legal proceedings can further bolster resiliency. Whether through advocacy for treatment ([Section Six: Effective Treatments for Traumatic Stress](#)) or facilitating a client-attorney relationship that conveys awareness of traumatic stress reactions, promoting a psychologically safe environment using the above strategies can support your clients' improved management of traumatic stress reactions.

Clients involved in child welfare proceedings should be routinely screened for exposure to trauma and related mental health conditions in order to determine their need for therapy and other services. In this section we distinguish between screening, assessment, and neuropsychological evaluations.

Screening refers to a brief set of questions administered to children, parents or caregivers to identify clients who likely suffer from trauma-related impairment. Screening can be conducted by attorneys using validated assessment instruments. Any client who screens positive for likely trauma exposure or symptoms can be referred to a qualified mental health professional for a full assessment. Various trauma-informed screening instruments and questionnaires are available for use ([see NCTSN Measures Review Database](#)).²⁰

A **trauma-informed mental health assessment** refers to a comprehensive evaluation conducted by a trained mental health provider such as a social worker, psychologist, or psychiatrist. The goal is to determine if the client is suffering from traumatic stress or other mental health problems and to generate recommendations for treatment or other social services. The provider conducting the assessment gathers information on trauma experiences or symptoms along with other mental health symptoms, medical issues, academic and employment history, and family dynamics, as well as strengths exhibited by the child, parent, family, and community. A thorough assessment should include information from several sources, including clinical interviews with the child, caregivers, and collateral informants; review of client records (school, medical, and mental health treatment); and behavioral observations.

Neuropsychological evaluation ([also referred to as cognitive evaluation](#)) is used to assess a child's current level of intellectual and academic functioning. Such evaluations may be warranted for clients who are experiencing significant academic or vocational problems or are suspected of having undiagnosed learning disorders or developmental delays. The latter are quite common among children with prior trauma exposure. You may need to make the case that such an assessment is required by reasonable efforts and request that the court order the assessment and approve payment by the child welfare agency.

Integrating trauma screening and assessment findings into court reports is a key element of a trauma-informed child welfare court system. Including these findings will assist the court to understand the impact of trauma on the child and parent, develop plans that support their resilience, and avoid decisions that may re-traumatize the child and parent. Screenings, assessments, and evaluations may need to be court-ordered. Depending on local law, the results are generally made available to all parties or may be obtained by one party or the other for use as an advocacy tool.



PRACTICE TIPS: CONSIDERATIONS FOR TRAUMA SCREENING AND ASSESSMENT

A trauma assessment is very different from a mental health assessment conducted as part of a custody evaluation. The former is not designed to provide recommendations regarding placement and visitation within the child welfare context.

Although it is recommended that you advocate for trauma-informed assessments of clients who screen positive for trauma exposure or symptoms, this may not always be possible within the confines of your particular role. Parents' attorneys in particular may resist trauma assessments if the parent client is not amenable to an assessment or if the attorney has concern that the parent may be viewed by courts as too "damaged" to be rehabilitated. In this case, one option is to consider whether this concern is outweighed by the potential benefits. Trauma screening and assessment will help ensure that parents with traumatic stress receive appropriate services to help facilitate their healing and address mental health issues that potentially impact their legal cases. While it is ultimately the client's decision, parents' attorneys can also engage in client-centered counseling to present both the potential benefits and potential risks of a trauma-informed assessment.

You should be aware of potential legal consequences related to information shared during court-ordered assessments. For example, an accused parent may report information on trauma history that could be used against him in court proceedings. Likewise, acknowledgment of living with an abusive spouse could be used as evidence that the parent is providing an unfit home environment for the child.

Whenever possible, each child and parent involved in child welfare proceedings should be screened for traumatic events and related symptoms as long as the jurisdiction has sufficient legal protections to ensure the information will not be used in ways that will further harm the youth or family.

Not all mental health agencies routinely ask about trauma exposure or symptoms during their assessments. You should make efforts to ensure that the child welfare agency arranges for trauma-informed assessments.

6

Effective Treatments for Traumatic Stress

Even severely traumatized youth and adults can recover from trauma with the right supports, including effective mental health treatment. The terms trauma-informed or trauma-focused treatment refer to mental health interventions designed to help people recover from traumatic stress. There are evidence-based trauma-informed or -focused interventions for every age group, ranging from infants to adults (*see NCTSN Empirically Supported Treatments and Promising Practices*).²¹

There are individual treatments for a traumatized child or parent as well as treatments designed for the parent and child to work together. Trauma-focused treatments can support client resilience by helping the client develop effective coping and problem-solving skills, build on strengths, reduce trauma-related symptoms, and improve social, academic, and developmental functioning. Trauma-informed treatment has been shown to improve mental health and behavioral outcomes among children and parents and to reduce the likelihood of future abuse or neglect.^{22, 23}

Whenever a client undergoes a comprehensive assessment (*see Section Five*) and is found to suffer from trauma-related impairment, you should advocate for trauma-informed treatment. A core principle of trauma-informed practice is to provide clients with a sense of control over the process. Thus, you should ask about and advocate for client preferences about treatment modality (*e.g., individual, family, or group treatment*) and therapist gender. Regarding the latter, some youth have an aversion to or may be triggered by a clinician of the same gender as their abuser.

Not all treatments are trauma-informed, including many of the treatments commonly recommended in family courts, such as parenting groups, substance abuse treatment, or anger management. Clients with traumatic stress are less likely to benefit from such interventions and more likely to end treatment prematurely. A negative treatment outcome may be used against the client (particularly a parent) as evidence he is unwilling or too damaged to change behaviors. Therefore, you should advocate that your clients are referred to trauma-informed treatment when indicated.

Many mental health providers have not been trained in trauma-informed treatment. In order to identify trained providers, you can search through relevant online directories. You can also interview prospective treatment providers to determine whether they offer trauma-informed treatment ([see Appendix Section Six](#)).

CORE ELEMENTS OF TRAUMA-INFORMED/FOCUSED TREATMENT

- Educating clients regarding trauma and its impact
- Increasing client sense of physical & psychological safety
- Identifying triggers for trauma reactions
- Developing emotional regulation skills
(*i.e., skills to help control and express strong feelings*)
- Developing trauma-informed parenting skills
- Addressing grief and loss (*when appropriate*)
- Processing traumatic memories

7

Placement Decisions, Transitions, and Visitation

The child welfare court system has historically focused on physical safety. More recently, however, there has been increased attention on ensuring psychological safety for children and families. Psychological safety is the ability to feel safe within one's self as well as safe from external harm. The inability to feel safe can impact an individual's interactions with others, can lead to a variety of maladaptive coping strategies, and can result in anxiety.

Removing a child from a home where there is neglect or abuse may improve his or her physical safety, but at the same time may impair the sense of psychological safety for both the child and the parents. Research shows that frequent placement changes are associated with poor outcomes for children involved in the child welfare system.^{24,25} You may not have the power to alleviate your clients' distress, but you can minimize trauma caused to families involved in the child welfare system and improve their sense of safety by becoming an advocate for them during the following critical junctures:

Placement Decisions:

In jurisdictions with client-directed representation, you should advocate for a child client's stated interests. Giving a child a voice in the proceedings will help the child feel that she has some control in a process that can otherwise be overwhelming and even traumatic. Attorneys advocating for the child's best interest should also consider the child's wishes in making the best-interest determination. You should first consider whether the child can safely remain in the home with any needed supports to minimize disruptions. When children must be removed from their homes, you should advocate that they be placed with a relative who is willing and able to provide a physically and psychologically safe home environment.

You should seek the input of your client, whether this is a child or parent, regarding relatives who may be able to provide a safe home for the child. You should also advocate for siblings to be placed together except in cases of suspected sibling abuse or other safety concerns. Research shows that youth who are initially placed in kinship foster care and with all their siblings are significantly more likely to achieve stable placement and exit the system.²⁶

In cases when an out-of-home placement is unavoidable, you should consider advocating for a placement close to the child's home community. This will allow the child to maintain connections with his or her support systems including extended family, church, school, teachers, mentors, and coaches. When a child is placed outside his community, you should advocate that he remain in the same school, unless it is in his best interest to move to a new school. This can also provide the stability, continuity, and connections with adults that are needed. One positive relationship with an adult can make all the difference for a child! Having a stable, nurturing relationship with an adult can facilitate tremendous healing and develop resilience for a child who has experienced trauma.

Transitions:

You can help with transitions through thoughtful and planned decisions regarding placements, visitation, and reunification.

You can:

- Advocate for a minimal number of moves and placement changes
- Assess the appropriateness of any placement based on the child's emotional, social, developmental, and medical needs
- Advocate for allowing both the child and caregiver time to prepare for visits with a parent
- Request time to say goodbye to a foster family by planning for reunification or a placement change in advance.

Visitation:

Children involved in the child welfare system often strongly voice a desire for contact with their parent(s), even in cases when the parent was abusive or neglectful. Thus, attorneys representing children or parents should advocate for visitation to begin as soon as possible except when it threatens the physical or psychological safety of the child or the child expressly does not want visitation with a parent.

Visitation should be intentional and well planned. It should be held in a neutral location away from any environment where a child may have experienced trauma. When appropriate, encourage and facilitate positive relationships and communication between birth parents and caregivers about the child's routines, habits, triggers, and coping skills. (*See Appendix Section Seven: "Working with Parents Involved in the Child Welfare System – Visitation."*)

Visits may trigger trauma reactions, so you can prepare your client (*child or parent*) in advance. It may be beneficial to communicate with the client's therapist to understand potential reactions to visits or when considering advocating for a change in visitation. Ask child clients how they feel about visits and try to determine what might trigger them (*sights, sounds, smells, places, voices, etc.*). You should communicate with the therapist regarding a client's reactions to visits before requesting changes in visitation. You can also encourage parent clients to use visits as an opportunity to practice certain skills and demonstrate their ability to parent safely.

The terms vicarious trauma or secondary traumatic stress (STS) describe the negative physical and psychological health consequences resulting from repeated exposure to the stories and experiences of traumatized clients. Attorneys handling child welfare cases are at high risk for developing secondary traumatic stress reactions due to frequent exposure to trauma survivors and their stories of maltreatment. Furthermore, research suggests that a substantial number of attorneys, particularly attorneys practicing specialties such as criminal law and family law, will be threatened with violence at least once in their careers.²⁷ One study of public defenders found that 34 percent of attorneys reported symptoms of STS while 11 percent met criteria for a diagnosis of PTSD.^{28,29}

STS reactions range from decreased empathy towards clients and changes in a sense of personal safety to the onset of PTSD symptoms (see [Section Two](#)). STS can lead to impairment in your mental or physical health, job performance, and personal relationships.³⁰ Those affected by STS may engage in risky or unhealthy behaviors to cope with STS. These behaviors may include increased substance use, experiencing feelings of estrangement from loved ones, or being overly focused on protecting one's own children from danger.

Risk Factors for Secondary Traumatic Stress:

Both individual and job-related or organizational factors may increase your risk for developing STS. Individual factors include a prior history of trauma exposure, such as attorneys who were themselves abused as children, and unhealthy strategies for coping with distress.²⁹ Job and organizational factors that influence risk for STS include the number of trauma survivors in your caseload, level of coworker and supervisor support, and education and training about STS.³¹ In a study on the incidence of STS among attorneys, participants attributed their traumatic stress reactions to a lack of education about understanding clients with trauma histories and the absence of a regular forum for discussing the stress of working with such clients.³²

Preventing Secondary Traumatic Stress:

There are several strategies that individual attorneys and agencies can adopt to help prevent STS. Training on working with trauma survivors has been shown to increase empathy and confidence in working with this population among mental health providers.³³ Recommended areas of focus for training with attorneys include:³¹

- Understanding the impact of trauma on children and adults
- Acquiring skills for working with trauma survivors
- Recognizing the signs and risks for secondary trauma and
- Practicing stress reduction and management skills such as mindfulness techniques

Formal supervision and peer support groups can also help prevent STS by providing support and a forum for discussing the challenges of working with trauma survivors. Agencies should also offer employee assistance programs or referrals to outside mental health providers for attorneys who develop symptoms of STS.

STRATEGIES FOR SELF-CARE

- Exercise regularly and maintain a consistent sleep schedule
- Eat healthy food and reward yourself with your favorite food occasionally
- Build breaks into your schedule—even if just a few minutes
- Connect daily with others who recharge your emotional state
- Practice mindful activities that can include meditation, yoga, or spiritual practices
- Set and maintain boundaries with clients: clarify that your role as attorney differs from those of social workers, case managers, or other service providers
- Reduce your caseload or diversify your practice, if possible
- Monitor your risk for STS by periodically completing a STS self-assessment tool such as the ProQOL or the Secondary Traumatic Stress Scale (see Appendix Section Eight for links)
- Connect clients with appropriate service providers—use a team approach for clients who have experienced trauma and need a high level of support
- Create a go-to list of local resources for clients
- Access state bar legal assistance programs or confidential support services when available or seek counseling services as needed



SIGNS OF VICARIOUS OR SECONDARY TRAUMATIC STRESS

- Disruption in perceptions of safety, trust, and independence
- Sleeping difficulties or nightmares
- Exhaustion
- Alcohol or drug use to self-medicate
- Anger or cynicism towards “the system”
- Difficulty controlling emotions
- Hyper-sensitivity to danger
- Increased fear and anxiety
- Intrusive thoughts or images of client trauma stories
- Social withdrawal
- Minimizing the impact of trauma
- Illness, increase in sick days at work
- Diminished self-care and depletion of personal resources
- Reduced sense of self-efficacy

POTENTIAL IMPACT OF SECONDARY TRAUMATIC STRESS ON JOB PERFORMANCE

- Reduced empathy towards clients
- Inability to listen to, or active avoidance of, clients
- Over-identification with clients, or conversely, shutting down emotionally (*both responses interfere with effective legal representation*)
- Distancing oneself from exposure to key aspects of a client's history and ongoing trauma, thereby potentially missing events with high probative value in litigation
- Overreaction by displaying hypervigilance through angry outbursts in court, or unduly questioning the credibility of witnesses when emotional legal issues become triggers
- Excessive anger or irritability, as a result of STS, may be masked as zealous advocacy in a trial setting, but may in fact be damaging to the attorney and client.
- Compromised quality of legal service due to emotional depletion or cognitive effects of STS. Some traumatized professionals, believing they can no longer be of service to their clients, end up leaving their jobs or the serving field altogether. Several studies indicate that the development of secondary traumatic stress often predicts that a helping professional will eventually leave the field for another type of work.

9

The Importance of Collaboration

Collaboration and coordination among service providers and systems comprise a key principle of trauma-informed practice.⁵ Therefore, it is important for attorneys and other providers working on a case to both collect and share information to support their clients as appropriate within legal and ethical confines. Benefits of information-sharing include:

- Preventing clients from having to repeat their trauma histories to multiple agencies or providers
- Ensuring that all involved parties understand trauma's impact on the client and tailor their services accordingly
- Increased ability to make sense of the client's behaviors or difficulties

The following section lists the roles played by professionals most often involved in child welfare cases, their scope of practice, and recommendations regarding how to work with each.

Children's Attorneys and Guardians ad Litem:

Many children do not immediately disclose traumatic events, like sexual abuse. Such children are frequently misdiagnosed, based on their behavior, with emotional disturbance, oppositional defiance, bipolar disorder, attention deficit hyperactivity disorder (*ADHD*) or other physical or developmental disabilities. Children may not understand why they engage in these behaviors, and may be afraid to tell the truth because it would require disclosure of the trauma. Collaboration with other parties is key to determining whether another assessment might be warranted. Foster parents and other caregivers often have a wealth of information that can be helpful. Has the child experienced known or suspected abuse or other trauma? If the child is engaging in conduct at home, could that conduct be caused by neurological responses to trauma? Unprovoked anger may be a manifestation of the fight response; running out of school or from home, the flight response; and tuning out, the freeze response. Sleep disturbances (*losing sleep at night, and sleeping during the day*), inability to focus, and depression may all be caused by trauma. Are there situations that trigger these behaviors? Does the child engage in self-harm, or appear depressed? What helps the child calm down? Conducting a thorough and independent investigation by collecting information from others can help you better understand the child's situation.

Sharing information (*as allowed under ethics rules and privacy statutes*) with parent attorneys, the treating therapist, school personnel, and court staff may benefit the child as well.

Parent Attorneys:

Parents may also have information that can help. However, there are important considerations related to confidentiality and other barriers that a parent attorney must consider. When it can benefit the parent and facilitate help for the child, a parent's attorney can encourage the parent to consider sharing this information. Parent attorneys can also ask their clients about how trauma may affect their parenting ability and discuss with their client the benefits and drawbacks of sharing this information.

Child Welfare Agency Case Worker:

Child services workers are required to regularly check on the child. They see children interact with their parents, foster parents, or kinship caregivers, often in the home. Much of the information case workers discover is incorporated into case planning and reports to the court. They often have additional information that may shed light on the child's experiences.^{34,35,36}

School Personnel:

Knowledge and incorporation of trauma-informed practices varies widely among different school systems. It is important that providers involved with the child's case, after obtaining the appropriate releases, inform the school about the child's special trauma needs. A child's case file will often contain information about the child's history, experiences, and family background that the school does not need in order to provide services. However, not all schools have comprehensive policies to protect children's privacy. You should ensure that only the information needed to serve the child is provided to the school, and that such information is provided only to individuals who have been trained to ensure and protect the child's confidentiality.

Many children who are experiencing neurological responses to trauma require accommodations in school to access their education. Common accommodations often provided in an Individual Education Plan (*IEP*) or 504 plan, include:

- Permitting the child to leave class early (*to avoid the hustle and bustle of busy pass times in the hall*)
- Permitting the child to leave class at any time to speak to a counselor
- Providing trigger warnings of materials in the curriculum that might trigger the student, and furnishing alternative assignments (*for example, doing an independent study in English when the class is studying a book that will likely trigger the student*)
- Adjusting the child's class schedule so the child can sleep later in the morning

The school may also have information that will help with understanding the child's needs. For this reason, ongoing dialogue with the school is essential.

Court staff:

Children's attorneys should take the lead to make sure that the child's needs are met in court and that court staff are aware of potential concerns. Important questions to consider include: Will the child or caregiver need accommodations in court? Will the client be triggered if the abuser (*i.e., abusive parent or partner*) will be in the courtroom? Do special arrangements need to be made?

Treating therapist:

With regular collaboration, the treating therapist can play a key role in making sure that a client's needs are met at school, at home, and in court. Attorneys and therapists alike must be mindful of their respective ethical duties to their clients. Treating therapists can generally opine about a client's needs and what would be helpful without violating client confidentiality. You should advise the therapist of upcoming court hearings so the therapist can help the client process the information, address potential triggers, and prepare for court. It is also helpful to obtain information from the treating therapist about a client's potential trauma triggers and strategies for preventing, addressing, or mitigating those triggers. Likewise, if a client is at risk for self-harm, you should speak to the therapist and inquire about steps or strategies that have been discussed with the client or put into place to reduce this risk.

The current guide was developed with two goals. The first goal is to increase the knowledge and skills of individual attorneys who work with clients who have survived trauma. The second, broader goal is to create trauma-informed child welfare and family court systems, in which all professionals, consumers, and stakeholders are educated about the impact of trauma and trauma-informed practices and policies. Creating trauma-informed service systems is a time- and resource-intensive effort that will require the involvement of a variety of stakeholders in child welfare and other service systems. In the list below, we have included specific resources that may assist attorneys and other system stakeholders in beginning to implement trauma-informed care in their local child welfare and family court systems. The Appendix to this document also includes additional resources to assist attorneys in both individual and systems-wide advocacy and practice.



Resources for educating other stakeholders on trauma-informed care

American Bar Association Center on Children and the Law's website on *Polyvictimization and Trauma-informed Legal Advocacy* http://www.americanbar.org/groups/child_law/what_we_do/projects/child-and-adolescent-health/polyvictimization.html

National Child Traumatic Stress Network and National Council of Juvenile & Family Court Judges. (2013). *Bench card for the trauma-informed judge*. Los Angeles, CA and Durham, NC: Authors. <http://www.nctsn.org/products/nctsn-bench-card-trauma-informed-judge>

National Child Traumatic Stress Network (2005). *Helping children in the child welfare system heal from trauma: A systems integration approach*. http://www.trauma-informed-california.org/wp-content/uploads/2012/02/A_Systems_Integration_Approach.pdf

National Council of Juvenile & Family Court Judges (2014). *Trauma court audit*. <http://www.ncjfcj.org/sites/default/files/Trauma%20Audit%20-%20Snapshot.pdf>

Aces too High (2014). <https://acestoohigh.com/2014/09/24/trauma-informed-judges-take-gentler-approach-administer-problem-solving-justice-to-stop-cycle-of-aces/>



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APPENDIX

Section One: Defining Trauma-Informed Legal Advocacy

American Bar Association's Policy on Trauma-Informed Advocacy for Children and Youth (2014) http://www.americanbar.org/content/dam/aba/administrative/child_law/ABA%20Policy%20on%20Trauma-Informed%20Advocacy.authcheckdam.pdf

National Council of Juvenile & Family Court Judges (NCJFCJ) site on Trauma-Informed Systems of Care <http://www.ncjfcj.org/our-work/trauma-informed-system-care>

Section Two: The Impact of Trauma Exposure on Child Development

Conradi, L. Supporting the Mental Health of Trauma-Exposed Children in the Child Welfare System, ABA Child Law Practice, Volume 34, Number 1 (January 2015). Available from http://www.americanbar.org/groups/child_law/what_we_do/projects/child-and-adolescent-health/polyvictimization/supporting-the-mental-health-of-trauma-exposed-children-in-the-c.html

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Section Three: The Impact of Trauma Exposure on Parents

NCTSN Fact Sheet: *Birth Parents with Trauma Histories and the Child Welfare System*

This factsheet series from the Birth Parent Subcommittee of the Child Welfare Committee highlights the importance of understanding the serious consequences that trauma histories can have for birth parents and the subsequent potential impact on their parenting.

- [For Parents](#) (2012)
- [For Child Welfare Staff](#) (2011)
- [For Judges and Attorneys](#) (2011)
- [For Mental Health Professionals](#) (2012)
- [For Resource Parents](#) (2011)
- [For Court-Based Child Advocates and Guardians ad Litem](#) (2013)

Section Four: The Impact of Trauma on the Attorney-Client Relationship

Kraemer, T., & Patten, E. (2014). Establishing a trauma-informed lawyer-client relationship (Part one). *Child Law Practice*, 33. Available from http://www.americanbar.org/groups/child_law/what_we_do/projects/child-and-adolescent-health/polyvictimization/establishing-a-trauma-informed-lawyer-client-relationship.html

Kraemer, T., & Patten, E. (2014). Communicating with youth who have experienced trauma (Part two). *Child Law Practice*, 33. Available from http://www.americanbar.org/groups/child_law/what_we_do/projects/child-and-adolescent-health/polyvictimization/communicating-with-youth-who-have-experienced-trauma--part-2-.html

Reitman, K. A. (2011). *Attorneys for children guide to interviewing clients: Integrating trauma informed care and solution focused strategies*. Utica, NY: Child Welfare Court Improvement Project, New York State Unified Court System. Available from <http://www.nycourts.gov/ip/cwvip/Publications/attorneyGuide.pdf>

Section Five: Screening and Assessment

Vandervort, F. E. (2015). Using screening and assessment evidence of trauma in child welfare cases. *Child Law Practice*, 34. Available from http://www.americanbar.org/publications/child_law_practice/vol-34/may-2015/using-screening-and-assessment-evidence-of-trauma-in-child-welfa.html

Pilnik, L., & Kendall, J. R. (2012). *Identifying polyvictimization and trauma among court-involved children and youth: A checklist and resource guide for attorneys and other court-appointed advocates*. North Bethesda, MD: Safe Start Center, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Available from http://www.americanbar.org/content/dam/aba/administrative/child_law/IdentifyingPolyvictimization.pdf

Section Six: Effective Treatments for Traumatic Stress

Finding Effective Trauma-Informed Treatment for Children, Teens, & Families

<http://www.nctsn.org/resources/topics/treatments-that-work/promising-practices>

The National Child Traumatic Stress Network's website includes a comprehensive list of the most effective and widely used trauma-informed treatments for children, adolescents, and families. This site includes a description of the core components of trauma-informed treatments and a list of trauma-informed interventions for children, adolescents, and families, with fact sheets summarizing the key components of each treatment and the research evidence that shows its effectiveness.

Finding a Trauma-Informed Therapist or Expert in Your Area

<http://www.nctsn.org/about-us/network-members>

The National Child Traumatic Stress Network is comprised of more than 100 federally-funded and affiliated academic and treatment centers around the US that provide trauma-informed mental health services and training/consultation on child traumatic stress. To find a trauma expert in your area, search the NCTSN's list of network members by state

<http://www.istss.org/find-a-clinician.aspx>

The International Society for Traumatic Stress Studies offers a searchable online database of mental health professionals that offer trauma-informed treatment across the globe.

<http://www.nctsn.org/resources/get-help-now>

The NCTSN's *Get Help Now* site offers information on finding help for children who have experienced abuse or neglect.

NCTSN Fact Sheet: *List of Questions to Ask Mental Health Professionals*

1. Does the individual/agency that provides therapy conduct a comprehensive trauma assessment?
If so: What specific standardized measures are given? What did your assessment show?
What were some of the major strengths and/or areas of concern?
2. Is the clinician/agency familiar with evidenced-based treatment models?
3. Have clinicians had specific training in an evidenced-based model (*when, where, by whom, how much*)?
4. Does the individual/agency provide ongoing clinical supervision and consultation to its staff, including how model fidelity is monitored?
5. Which approach(es) does the clinician/agency use with children and families?
6. How are parent support, conjoint therapy, parent training, and/or psychoeducation offered?
7. Which techniques are used for assisting with the following: Building a strong therapeutic relationship; affect expression and regulation skills; anxiety management; relaxation skills; cognitive processing/reframing; construction of a coherent trauma narrative; strategies that allow exposure to traumatic memories and feelings in tolerable doses so that they can be mastered and integrated into the child's experience; personal safety/empowerment activities; resiliency and closure
8. How are cultural competency and special needs issues addressed?
9. Is the clinician or agency willing to participate in the multidisciplinary team (*MDT*) meetings and in the court process, as appropriate?

Section Seven: Placement Decisions, Transitions, and Visitation

ReMoved – video about the experience of children in foster care system <http://vimeo.com/73172036>

NCTSN Presentation: *Working with Parents Involved in the Child Welfare System - Visitation*

http://www.nctsn.org/nctsn_assets/anc16_new/visitation/presentation_html5.html

ACS-NYU Children's Trauma Institute. (2012). *Easing foster care placement: A practice brief*.

New York: NYU Langone Medical Center. Available from http://www.nctsn.org/sites/default/files/assets/pdfs/easing_foster_care_placement_practice_brief.pdf

Smariga, M. (2007). Visitation with infants and toddlers in foster care: What judges and attorneys need to know.

Washington, DC: American Bar Association. Available from http://www.americanbar.org/groups/child_law/what_we_do/projects/child-and-adolescent-health/infants-and-young-children.html

Section Eight: Secondary Traumatic Stress and Attorneys

Rainville, C. Understanding Secondary Trauma: A Guide for Lawyers Working with Child Victims, ABA Child Law Practice, Volume 34, Number 9 (September 2015). Available from http://www.americanbar.org/groups/child_law/what_we_do/projects/child-and-adolescent-health/polyvictimization/understanding-secondary-trauma-a-guide-for-lawyers-working-with.html

Institute for Redress & Recovery, Santa Clara Law. (n.d.) *Secondary trauma and the legal process: A primer & literature review*. Santa Clara, CA: Author. Available from <http://law.scu.edu/redress#5>

van Dernoot Lipsky, L., & Burk, C. (2009). *Trauma stewardship: An everyday guide to caring for self while caring for others*. San Francisco, CA: Berrett-Koehler Publishers. <http://traumastewardship.com/inside-the-book/>

The *Professional Quality of Life Scale* (ProQOL) is a 30 question assessment of secondary traumatic stress, burn-out, and compassion satisfaction that is intended for use by a wide range of helping professionals. To download a free copy of the ProQOL, including instructions on how to complete and score the questionnaire, visit http://www.proqol.org/ProQol_Test.html. Mental health counseling or other supports can be helpful for addressing high scores on the secondary trauma or burnout scales of the ProQOL. Refer to Section 6 of this Appendix for additional information on locating a trauma-informed therapist in your area.

Section Nine: The Importance of Collaboration

Stewart, M. (2013). Cross-system collaboration. Los Angeles, CA & Durham, NC: National Center for Child Traumatic Stress. http://www.nctsn.org/sites/default/files/assets/pdfs/jj_trauma_brief_crosssystem_stewart_final.pdf

The Juvenile Law Center and Robert F. Kennedy National Resource Center for Juvenile Justice have developed the *Models for Change Information Sharing Toolkit*. Available from www.infosharetoolkit.org/

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