


Building a Better Defense: Improving Case Outcomes Through Social Worker and Attorney Partnership

National Organization for Forensic Social Work Conference
June 2021

Presenters:
Mary Ann McGinnis, Esq. and Karen Clark, LCSW, PhD



1

Committee for Public Counsel Services

- ▶ In Massachusetts Public Defenders are provided through the Committee for Public Counsel Services (CPCS)
- ▶ In 1983, CPCS was formed to "establish, supervise and maintain a system for the appointment or assignment of counsel" for indigent persons involved in criminal and certain noncriminal judicial proceedings in which the right to counsel has been established. G.L. c. 211D, § 5.
- ▶ There are approximately 500 staff attorneys and 3000 private counsel who have been specially trained and certified to accept appointments.
- ▶ Of all court-appointed attorneys on cases in MA, 80% of cases are represented by private attorneys

2

Overview of CPCS

Areas of law covered:

- ▶ Public Defenders (criminal)
- ▶ Children and Family (child welfare cases)
- ▶ Youth Advocacy Division (delinquency and youthful offender cases)
- ▶ Mental Health Litigation Division (adult guardianships, mental health and substance abuse commitments)
- ▶ Immigration Impact Unit (Provides information, support, advice to attorneys in all other divisions regarding immigration issues)

3

▶ CPCS Public Defender offices are located in the 14 counties of Massachusetts. Each office employs attorneys, support staff, (administrative assistants and paralegals as well as social workers in some cases)

▶ The Private Counsel Division has lawyers who contract with CPCS to practice in the one or more areas of law after attending training and being certified to practice in each area of law of their choosing.

▶ New attorneys to the private bar are assigned a mentor in their chosen area until they reach a level of expertise to be graduated from the mentor program (length of time in program varies by attorney).

▶ Today we will focus on the children and family law (CAFL) division of CPCS and the benefits of attorney – social work collaboration

4

Retaining a Private Social Worker

▶ Private lawyers have access to hire experts to assist in their matters through the Court costs legislation M.G.L.c. 261

▶ Private lawyers must obtain a motion for funds permitting them to retain a private social worker with an accompanying affidavit

▶ Once to motion is allowed by the judge, an attorney may contact the social worker of choice best suited to work with a particular client based on client needs

▶ CPCS main offices in Boston maintain a roster of social workers and their various areas of practice expertise

5

Why Retain a Social Worker?

▶ Observe DCF supervised visits between parents and their children

▶ Assist with accessing services

▶ Housing

▶ Apply for public benefits

▶ Assist with restraining orders

▶ Bonding studies

▶ Behavioral assessments

▶ Assist with family reunification plans

▶ Assist with the interpretation of psychological testing results

6

Social Worker Testimony

- ▶ Rule 701 - Social workers may be asked to testify in court as to their observations e.g. how parent and child interacted during a visit and or primary fact, e.g. mother applied to 8 subsidized housing lists, if social worker assisted in completing and filing of applications
- ▶ Rule 702 - A social worker can be asked to offer expert testimony including opinion
- ▶ The social worker must be qualified as an expert prior to being allowed to testify as an expert in rule 702

7

Federal Rules of Evidence Rule 701 Opinion Testimony By Lay Witnesses

- ▶ The first rule in Article VII begins by defining expert testimony by what it is not – lay witness testimony.
- ▶ It states that if a witness is not testifying as an expert, opinion testimony must be:
 - ▶ a) rationally based on the witness's perception;
 - ▶ b) helpful to clearly understanding the witness's testimony or to determining a fact in issue;
 - ▶ c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

8

Benefits of Social Worker and Attorney Collaboration

- ▶ Holistic defense is part of zealous legal advocacy
- ▶ Social Workers bring a different perspective and skill set
- ▶ Increases likelihood of successful outcome and life outcome for the client
- ▶ Humanizes the client and tells their story – Covid Challenges
- ▶ Contextualizes the offenses and behaviors and identifies client strengths and positive qualities
- ▶ Provides understanding of family dynamics, trauma, coping, developmental delays

9

What Can Social Workers Do?

- ▶ Aid in Sentencing and Mitigation Reports
- ▶ Advocate and communication with collateral systems
- ▶ Maintain contact with clients and actively advocate
- ▶ Foster client engagement with services (challenging for juvenile cases)
- ▶ Prepare release plans
- ▶ Psychosocial Assessments
- ▶ Identify Alternatives to Incarceration / Detention
- ▶ Testimony
- ▶ Assist Attorney with preparing witnesses to testify

10

What Can Social Workers Do?

- ▶ Help clients understand what is being asked of them *
- ▶ Attend treatment meetings
- ▶ Advocate for appropriate recognition of client progress and compliance
- ▶ Maintain contact with client to track status changes and potential changes in service needs
- ▶ Review records and reports
- ▶ Trauma informed and strengths-based approach
- ▶ Explore needs for other evaluations (DDS, DV assessment, SUD assessment)

11

The Case of "C"

- ▶ Case Background
 - ▶ 31 Caucasian Female; 4 Children; Hx of DV, Trauma, Mental & Physical Health; Alcohol Addiction; Suicidality
- ▶ Complicating Factors
 - ▶ Lack of SS; Poverty; Case Related Stressors; Limited Contact with Children; Extensive Service Expectations; Multiple DCF workers
- ▶ Case Trajectory
 - ▶ Reunification – Adoption – Guardianship - Reunification
- ▶ Current Case Status

12



13
