



Kentucky Bar Association Convention

Building Blocks *of* Democracy

Civics | *Communities* | *Access to Justice*

THE LATEST THINKING ON HOW BEST TO ADDRESS CHILD MALTREATMENT IN CASES INVOLVING DOMESTIC VIOLENCE

Sponsor: Committee on Child Protection and Domestic Violence and
Civil Litigation Section

CLE Credit: 2.25

Thursday, June 17, 2010

8:30 a.m. - 10:40 a.m.

Elkhorn Meeting Rooms A-D

Lexington Convention Center

Lexington, Kentucky

A NOTE CONCERNING THE PROGRAM MATERIALS

The materials included in this Kentucky Bar Association Continuing Legal Education handbook are intended to provide current and accurate information about the subject matter covered. No representation or warranty is made concerning the application of the legal or other principles discussed by the instructors to any specific fact situation, nor is any prediction made concerning how any particular judge or jury will interpret or apply such principles. The proper interpretation or application of the principles discussed is a matter for the considered judgment of the individual legal practitioner. The faculty and staff of this Kentucky Bar Association CLE program disclaim liability therefore. Attorneys using these materials, or information otherwise conveyed during the program, in dealing with a specific legal matter have a duty to research original and current sources of authority.

**Printed by: Kanet Pol & Bridges
7107 Shona Drive
Cincinnati, Ohio 45237**

Kentucky Bar Association

TABLE OF CONTENTS

The Presenters	i
Some Practice Considerations for Child Protection Cases Involving Domestic Violence	1
Some Questions to Consider in Child Maltreatment Cases Involving Domestic Violence	3
Substantiation Hearing of Mark G	9
<u>In Re Jamie S.</u>	13
Menu of Expectations for Batterers in Child Protection Cases Where Domestic Violence is Present.....	35
Ten Item Checklist about the Intersection of Domestic Violence, Substance Abuse and Mental Health Issues	41
Batterer's Behavior as It Specifically Relates to Substance Abuse, Mental Health (His/Hers/Child's)	43
Some Thoughts on the Intersection of Substance Abuse, Mental Health and Domestic Violence	45
Ethical Scenarios	47
Guardian ad Litem Protocol Report.....	55
Proposed New Family Court Rules of Procedure and Practice.....	61

THE PRESENTERS



David Mandel
David Mandel & Associates LLC
Post Office Box 745
Canton, Connecticut
(860) 490-8638

DAVID MANDEL has been working in the domestic violence field for over twenty years. He writes, trains and consults nationally on improving systems' responses to domestic violence when children are involved, and batterer accountability and change. Mr. Mandel is currently overseeing a statewide network of domestic violence consultants for the Connecticut Department of Children and Families and assisting Florida's Department of Children and Families in improving its response to domestic violence. He has written a forty-hour curriculum, entitled Dedication, which is being used to train all new batterer intervention providers in Texas. Mr. Mandel has also written Being Connected, a curriculum for working with fathers, co-authored a batterer intervention program manual, and "Batterers and the Lives of Their Children", a chapter in Violence Against Women in Families and Relationships.

Joshua B. Crabtree
Children's Law Center, Inc.
1002 Russell Street
Covington, Kentucky 41011
(859) 431-3313

JOSHUA B. CRABTREE is the managing attorney of the Children's Law Center, practicing exclusively in the area of representing children. He received his B.A. (*cum laude*) from Transylvania University and his J.D. (with honors) from the University of Cincinnati College of Law. Mr. Crabtree is a member of the Northern Kentucky and Kentucky Bar Associations, the Kentucky Bar Association Committee on Child Protection and Domestic Violence and Leadership Northern Kentucky.



Judge Jason Shea Fleming
Christian County Justice Center
100 Justice Way, Second Floor
Hopkinsville, Kentucky 42240
(270) 889-6038

JUDGE JASON SHEA FLEMING serves as circuit judge, Family Court, Division 3 of the Third Judicial Circuit. Prior to his election to the circuit bench, he served as Assistant Christian County Attorney, Director of Christian County Juvenile Services and volunteered with the Christian County Juvenile Drug Court. He also maintained a private practice. Judge Fleming received his bachelor's degree from the University of Kentucky and his J.D. from the University of Kentucky College of Law (*cum laude* and Order of the Coif). He is the recipient of the 2006 Kentucky Public Advocate Award, and the 2007 Christian County Juvenile Drug Court Meritorious Service Award.

Sheila F. Redmond
Cabinet for Health & Family Services
225 West Stephens Street
Post Office Box 4274
Midway, Kentucky 40347
(859) 246-2696

SHEILA F. REDMOND is an attorney with the Cabinet for Health and Family Services. Her practice is currently focused in the areas of termination of parental rights and administrative appeals of abuse and neglect substantiations. Prior to her current position, Ms. Redmond served as a public defender in Louisville representing juveniles in status cases, public offense cases and youthful offender cases. She is a graduate of Western Kentucky University and received her J.D. from the University of Kentucky College of Law.

SOME PRACTICE CONSIDERATIONS FOR CHILD PROTECTION CASES INVOLVING DOMESTIC VIOLENCE

David Mandel

1. Assessment, documentation, case planning and decision making about domestic violence as factor in child safety and well-being rests heavily on 1) an accurate description of the domestic violence perpetrator's pattern of behavior and 2) a comprehensive assessment of the domestic violence survivor's full spectrum of efforts to promote the safety and well-being of the child.
2. Since the impact of domestic violence on children varies based on a number of factors, it is critical for documents to describe the relationship between the domestic violence perpetrator's behavior pattern and the child's safety, basic needs and functioning.
3. A comprehensive assessment of a domestic violence perpetrator's pattern of behavior needs to include (but is not limited) the history of using the child as weapon against the other parent; supporting the relationship between the domestic violence survivor and the child; supporting a partner's parenting; disrupting normal household functioning; financial support of the child, and other factors that complete the picture of the impact of the domestic violence perpetrator on the overall safety and well being of the child.
4. Comprehensive assessments of survivor's strengths as a parent need to include (but not be limited to) the history of reaching out for help and support including law enforcement, seeking civil protective orders, separating/divorcing/leaving the perpetrator, seeking counseling/advocacy services, reaching out to friends and the day to day behaviors associated with trying to reduce or prevent exposure of the child to the perpetrator's violence and abuse and the day to day behaviors associated with maintaining the child's basic needs and well being.
5. From the perspective of the child's healing from trauma, safety, stability and nurturance, it is ideal to maintain the child with the domestic violence survivor whenever possible.
6. Good documentation in domestic violence cases goes beyond language like the "family has a history of domestic violence" to describing the perpetrator's specific behavior pattern. It does not lump together mother and father but describes each of their roles with the child based on their equal responsibility for the safety and well-being of the child. It avoids language like "mother allowed the father into the home" when it is more

accurate to say that “father violated the protective order by returning to the home” or the perpetrator’s pattern of coercion is the more relevant factor in the father’s return to the home.

7. Given the high prevalence of domestic violence on the child protection caseload, universal screening for domestic violence in every case, regardless of the initial allegation, is highly recommended. Separate interviews of the parents and a standardized protocol are both essential elements in screening for domestic violence.
8. Protocols for considering the safety of the adult survivor and the child as a case moves through the child welfare system are highly recommended. These include discussions with the survivor about how the child welfare system’s involvement will impact safety; managing information that if shared with the domestic violence perpetrator may increase the danger of violence; and safety planning for court hearings including the consideration of separate hearings for the perpetrator and survivor.

SOME QUESTIONS TO CONSIDER IN CHILD MALTREATMENT CASES INVOLVING DOMESTIC VIOLENCE

David Mandel

Questions attorneys can consider when reviewing cases, meeting with workers, reviewing petitions and preparing for court.

1. Are you being presented with information about specific controlling/abusive/violent behaviors associated with the allegations?¹

Examples:

- a. What were the specific threats?
- b.. What did he specifically do to stop her from leaving?

2. Are you being presented with specific information about a pattern of coercive control (prior behaviors and current non-physical forms of abuse/control)?²

Examples:

- a. What other non-physical forms of abuse did he engage in during the incident?
- b. What do we know about prior controlling and abusive behaviors?³

3. Are you being presented with information about how the domestic violence perpetrator's behavior relates to adverse impact on the children?⁴

¹ A presentation that consists of "There is domestic violence in this family" does not provide the information needed to assess for child safety, provide a context for understanding a survivor's decision making or development meaningful interventions for perpetrators.

² Question formulations that lump parents together like "Mother and father engage in domestic violence" or place blame on the survivor or children for the perpetrator's choice to become violent and abusive, like "She has a history of cheating on him so I can see why he would get pissed off at her."

³ As gathered in prior CPS involvement, criminal history/police reports, information from survivors, children and collaterals.

⁴ This must include but not be limited to "Did the children see or hear the incidents of violence?"

Examples:

- a. What did he do to involve or interact with his children during the incident?
 - b. Did he interfere with the children's care/routine as part of the incident?
 - c. What do we know about how he has undermined/supported the mother's parenting?
 - d. What verbal abuse and other forms of control has he chosen to expose the children to?
 - e. What do we know about him using the children as a weapon against the mother?
 - f. What do we know about how he has attacked or supported the relationship between the children and their mother?
 - g. If the children are involved in services, what kind of support or interference has he offered related to their therapy, outside services? What does he do to support/nurture the children? How does he parent the children (specific behaviors)?
4. Are you presented with information about the survivor's efforts to support the safety and well being of the children?

Examples:

- a. Day to day, what is the mother doing to keep the children stable and on track despite the violence and abuse?
- b. What has she done to actively buffer or shield the children from the perpetrator's abuse and violence?⁵
- c. What did the survivor say about what has worked in the past to make things better?

⁵ This cannot solely focus on whether she sought a civil protection order, called the police or separated/left the relationship. It must also include items like sending children to other room, trying to calm perpetrator down, keeping the children in outside activities to reduce their exposure to abusive behaviors.

- d. What information is available about whether the situation⁶ got better or worse when she sought outside help?
- 5. Are you being presented with information about what was done to build trust and a partnership with the survivor?

Examples:

- a. How did you explain the CHFS's position on domestic violence to mother?⁷
- b. What did you do to validate her efforts to promote the safety and well being of the children?
- c. What did she say would make her safer?
- 6. Are you being presented with information about the interventions and expectations for the perpetrator?

Examples:

- a. What did you do to contact, meet with the perpetrator?⁸
- b. What are our expectations of him regarding behavior and services?
- c. Does the documentation reflect clarity about the perpetrator's behavior patterns and its impact on the children?

⁶ This includes but isn't limited to "Did the violence get worse or better?" "Did housing, finances, work, outside relationships get better or worse?"

⁷ You are generally looking for the worker to provide clarity about the CHFS seeking to (1) intervene with the perpetrator to increase safety for the survivor and the children and (2) partner with the survivor by seeking to understand her efforts to date to keep herself and the children safe and stable, and working together to strengthen those efforts.

⁸ This is important even if the perpetrator is not currently in the home. The primary exception to this is if there is a concern that contacting him will create a serious increase in safety concerns for the family and/or worker. Whether it includes a referral to a batterer intervention program expectations should ultimately focus on behavior change goals related the controlling, abusive and violent behavior. These can include but not be limited to stopping physical violence, emotional abuse, threats, financial control, control over vehicle and phone, child support, and other factors associated with his identified pattern of coercive control.

7. Are you being presented with information on the adverse impact on children?

Examples:

- a. Has the impact of the alleged incident on the children's physical safety, emotional well-being, and functioning been explored?⁹
 - b. Were the children interviewed?
 - c. Has the impact on the on-going pattern of coercive control on the children been explored?¹⁰
 - d. Has the perpetrator interfered with pre-natal care, well baby visits, medical and/or mental health appointments?
 - e. What has been the impact of the perpetrator's behavior pattern on survivor's parenting authority with children, children's treatment of survivor, and children's attitudes and beliefs about gender and relationship?
 - f. What has the perpetrator modeled for the children regarding behavior and attitudes?
8. Have other factors been considered/factored into case presentation?

Examples:

- a. What is the impact of cultural background on coercive control, supports and services for survivor, perpetrator and children?
- b. Has education, income, and other factors related to status been factored into the assessment of patterns of coercive control?
- c. Has the relationship between survivor's substance abuse and mental health issues and coercive control been explored?¹¹

⁹ This includes but is not limited to an exploration the children's emotional response to alleged incident, disruption in children's routine, the traumatic nature of the incident, and involvement in the incident by the perpetrator and/or their efforts to intervene. The emotional response may include but not be limited to fear, sadness, confusion, anger, shame, and guilt. Fears may involve fear of physical harm to self and/or others, fear of break up of family, and other forms of anxiety.

¹⁰ For example, in one family, a domestic violence perpetrator's constant accusations of cheating whenever the survivor took the children to the park led the mother to stopping her outings with the children. So as a direct result of the perpetrator's behavior, the children had less opportunity for socializing and play outside the home.

- d. Has the relationship between the perpetrator's substance abuse and mental health issues and coercive control been explored?¹²
- e. Have other specific high risk factors been explored and addressed?¹³

¹¹ For example, is the perpetrator sabotaging recovery efforts? Are the survivor's providers factoring in history of the coercive control and abuse in their assessment/diagnosis/treatment plan?

¹² In general mental health and substance abuse are not seen as causal in domestic violence cases. They are separate factors that may increase dangerousness and need to be treated. Treatment for substance abuse and mental health issues is a necessary step to reduce dangerousness but do not guarantee a decrease in dangerousness.

¹³ These include but are not limited to the presence/use of weapons, violence leading to injuries requiring medical attention, threats to kill, stalking, kidnapping, extreme jealousy/possessiveness, violence during pregnancy, and sexual assault.

**STATE OF CONNECTICUT
DEPARTMENT OF CHILDREN AND FAMILIES
ADMINISTRATIVE HEARINGS UNIT
505 HUDSON STREET
HARTFORD, CT 06106**

Final Decision

Substantiation Hearing

RE: **Mark G.
LINK # 252778**

HEARING DATE: July 7, 2009

HEARING OFFICER: Attorney Robin D. O'Shea

PARTIES: Mark G., Appellant
Elisangela Silva, Investigator

REPRESENTATIVES: Megan Hannan, Paralegal Specialist 2

DATE OF DECISION: July 23, 2009

I. Introduction

A Substantiation Hearing was held in the Bridgeport Area Office of the Department of Children and Families at the Appellant's request, on July 7, 2009. At issue in the hearing was the Department's decision to substantiate the Appellant for emotional neglect of his daughter, Jasmine. The Department did not recommend that the Appellant's name appear on the Central Registry of Persons Responsible for Child Abuse and Neglect. **HELD: The Department's decision is supported by the record, and is UPHELD.**

II. Documents Entered onto the Record

Exhibit #1 Notification of Investigation Review Results, dated April 22, 2009.
Exhibit #2 Request for Substantiation Hearing, Received on June 9, 2009.
Exhibit #3 Notice of Substantiation Hearing, dated June 11, 2009.
Exhibit #4 CPS Report Protocol, dated November 16, 2008.
Exhibit #5 DCF Investigation Protocol, dated November 17, 2008.
Exhibit #6 Two Color Photographs of Reba G.

III. Findings of Fact and Conclusions of Law

1. The Appellant and his wife are the parents of two children, Myles, date of birth June 22, 1994; and Jasmine, date of birth November 10, 1998. The

- couple has been married for sixteen years, and together for nineteen years. They have no prior history with the Department.
2. The Appellant and his wife have had marital difficulties, and agreed to certain boundaries within their marriage. They have discussed and considered separation in the past.
 3. The family attended church on November 16, 2008. After the service, they began talking to family friends. The Appellant's wife reached over and pulled one of the male friend's braids out of his coat. The Appellant believed that this action violated the boundaries he and his wife had erected to preserve their marriage.
 4. The family left church, and went out for breakfast. The Appellant and his wife then dropped the children off at home, and left in his vehicle to go car shopping. Prior to car shopping, they parked the car in the rear parking lot of the Department of Motor Vehicles, to discuss the wife's conduct earlier that day.
 5. While in the parking lot, the Appellant physically beat his wife. She sustained bruising and significant swelling to both eyes, scratches to her forehead and the bridge of her nose, as well as a bloody lip. As they were driving home, the wife jumped out of the car at a traffic light, and ran to a police car that was behind them.
 6. The Appellant was arrested for First Degree Assault, Threatening, Unlawful Restraint, Reckless Endangerment and Attempted Manslaughter. A full no-contact protective order was issued on behalf of the wife and two children.
 7. The Appellant's wife left the marital home with her children, and went to stay with relatives.
 8. On the day after the incident, Jasmine became upset at school. She had difficulty concentrating, and began to cry. She explained to her teacher what had happened between her parents. The teacher contacted the mother, who agreed that Jasmine should come home early from school.
 9. Both children were initially very angry with their father and did not want to see him. They had experienced a close relationship with him prior to this incident, and eventually did pursue contact with him. The protective order was modified accordingly.
 10. Both children denied any physical discipline or inappropriate parenting by either parent.
 11. The Appellant is very involved with his children's extra-curricular activities, and has always provided well for them.
 12. The Appellant denied any history of past domestic violence with his wife, and provided an alternative version of the events in this incident. His testimony was not credible.

IV. Applicable Law/Regulation and Policy

Substantiation and Central Registry Hearings conducted by the Department of Children and Families are held in accordance with state statutes (Conn. Gen.

Stat. §§17a-101k, 46b-120 and 53a-18), state regulations (Regulations of Connecticut State Agencies §17a-101k-(1-16)), and Department Policy (22-12-1 through 22-12-8, 34-2-7 and 34-2-8). Copies of the relevant sections of these documents are attached to this decision as Appendix A.

V. Decision

The Department substantiated the Appellant for emotional neglect of his daughter, Jasmine, after the child became distraught at school over her parents' recent physical confrontation. In order to uphold the finding, the Department must establish that the Appellant is a person responsible for the child's care; that the Appellant denied proper care and attention to the child's affective needs, and that this conduct had an adverse impact on the child or seriously interfered with the child's positive emotional development. DCF Policy 34-2-7. The Department has met its burden in this case.

The Appellant is Jasmine's father, and is therefore, a person responsible for her care. He is also engaged in conduct that he knew or should have known, might have a serious risk of adverse emotional impact on his children. Ultimately, it has been established that Jasmine was adversely impacted. She initially did not want to see her father, with whom she had previously experienced a close relationship, and she broke down in school, unable to complete the school day due to her distress.

This case is unusual, in that the child victim did not actually witness the domestic violence. However, she did see the results of that violence on her mother's face. Those injuries were significant and substantial. The child, along with her mother and brother, were also forced to flee their home and live with relatives for a period of time. All of these factors support the Department's contention that the Appellant's conduct adversely impacted the child's well-being. For these reasons, the Department's decision to substantiate the Appellant for emotional neglect of his daughter is supported by the record.

VI. Right to Appeal

The right to appeal the final decision in this matter is governed by Connecticut General Statutes, section 4-183.

Robin D. O'Shea
Staff Attorney 3

Copy:
Appellant, Certified Mail
Toya Graham, Principal Attorney
Megan Hannan, Paralegal Specialist 2

Malcolm Blue, Program Director
Rhonda Moore, Investigations Supervisor
Elisangela Silva, Investigator
Heidi McIntosh, Deputy Commissioner
Maureen Duggan, Assistant Agency Legal Director
Thomas De Matteo, Assistant Agency Legal Director
Matthew LaRock, Assistant Agency Legal Director
Rudy Brooks, Bureau Chief, Prevention and External Affairs
Gary Kleeblatt, Communications Director
John Tucker, Assistant Attorney General
Training Academy
Hotline
file (2)

The “officially released” date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the “officially released” date appearing in the opinion. In no event will any such motions be accepted before the “officially released” date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears on the Commission on Official Legal Publications Electronic Bulletin Board Service and in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

In re Jaime S.*
(AC 30956)

Argued January 5 -- officially released April 27, 2010

(Appeal from Superior Court, judicial district of Middlesex, Child Protection
Session, Bear, J.)

David J. Reich, for the appellant (respondent).

Howard I. Gemeiner, for the appellee (petitioner).

Opinion

* In accordance with the spirit and intent of General Statutes §46b-142(b) and Practice Book §79-3, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the Appellate Court.

LAVINE, J. This appeal requires that we determine whether the trial court properly found that the respondent father had abandoned his son pursuant to General Statutes §45a-717(g)(2)(A). In adjudicating a petition to terminate parental rights on the ground of abandonment, the court's focus is on the parent's conduct. In re Kezia M., 33 Conn. App. 12, 17, 632 A.2d 1122, cert. denied, 228 Conn. 915, 636 A.2d 847 (1993). The father¹ claims on appeal that (1) the court's findings that (a) he abandoned his son and (b) it was in the son's best interest to terminate his parental rights are clearly erroneous, and (2) the court violated his right to due process by denying his request for a continuance so that he could participate in the second day of trial. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to our resolution of the father's claims. On March 19, 2007, the petitioner mother filed a petition to terminate the parental rights of the father as to their son in the Court of Probate for the district of Meriden. In support of her petition, the mother alleged that she and the father married in Riverside in 1999, separated in 2001 and were divorced in the state of New York in 2003. In October, 2002, a New York court ordered an emergency medical evaluation of the father on the basis of his conduct in open court. The father indicated that he was going to commit suicide. The mother also alleged that, during and subsequent to the divorce proceedings, the court ordered supervised visitation for the father with his son but that the supervising agencies terminated the visitation due to the father's inappropriate behavior.

The mother further alleged that since the time of the divorce, the father has threatened her life. She and the son fled New York to a safe house and have kept their whereabouts from the father. The father subsequently filed a petition for visitation with the child, but the petition was denied by the New York family court. The mother also alleged that at the time she filed the petition to terminate the father's parental rights, a permanent order of protection for her and the child was in effect. Moreover, she alleged that the father was a substance abuser, who has been incarcerated several times since the date of the parties' marriage. The mother alleged her belief that the only way that she and the child could be safe was to terminate the father's parental rights. She sought to terminate the father's parental rights on the grounds of abandonment, denial of care, guidance or control necessary for the child's well-being and no ongoing parent-child relationship pursuant to §45a-717 (g).

On May 9, 2007, the Probate Court, *Hon. Brian T. Mahon*, asked the department of children and families (department) to investigate and to provide a written report on or before August 7, 2007. On December 18, 2007, the Probate Court granted the father's motion to transfer the termination proceedings to the Superior Court for juvenile matters. The Superior Court for juvenile matters subsequently transferred the matter to the Child Protection Session. On September 4, 2008,

¹ Counsel for the son adopted the positions taken by the father at trial and on appeal.

the father appeared in Superior Court with counsel, waived any defects in service, waived his advisement and entered a pro forma denial of the allegations of the petition. The father also requested, and the mother agreed, that the child undergo a psychological evaluation. On October 2, 2008, counsel for the father informed the court that the father was being detained by the United States Bureau of Immigration and Customs Enforcement (immigration service).²

Trial on the termination petition commenced, as scheduled, on January 21, 2009. The mother was present with counsel. The father, who participated via telephone from New Mexico where he was being detained, was represented by counsel. The child's counsel also was present.

The mother called the father as her first witness.³ The father testified that he had been arrested eight to ten times but that he had been incarcerated only three times. Two of his incarcerations were the result of his having been charged with violating the protective orders in favor of the mother, but he claimed that he was never found guilty of violating a protective order. Until the immigration service detained him in New Mexico, he had been incarcerated primarily in New York state. He had been arrested for assault in the third degree, shoplifting, unauthorized use of a motor vehicle, at least twice, and motor vehicle moving violations. The reasons for his arrests have never involved minor children. He was incarcerated for three months for the unauthorized use of a motor vehicle, three days for shoplifting, thirty days for assault in the third degree and eight months for violation of probation.

The father last saw his son when the child was three or four years old. According to the father, the child had a close relationship with the father's family, but the relationship ended in 2003. The father blamed the mother for getting a protective order against the father's sisters because she feared they would help the father take the child to Colombia. The father believes that the mother deliberately kept the child away from him for the past five years. The father stated that he "utilized a lot of court processes to find the mother and that even the New York court tried to help him." He also claimed that he bought gifts and prayers for his son but that

² The father was being detained by the immigration service pending a review of his immigration status. He had been born in Colombia but had lived in the United States since he was five years old. He has extensive family in Colombia, which he last visited in 1988. In 2005, the father was convicted of unauthorized use of a motor vehicle and placed on probation. In 2007, he violated his probation by engaging in an assault. The immigration service treated his probation violation as a second offense involving moral turpitude, subjecting him to possible deportation. The father anticipated that a decision concerning his deportation would be made by the end of April, 2009.

³ The court found that the length of the father's availability by telephone was controlled by the personnel at the detention center. The court and counsel were uncertain how long the father would be available by telephone and agreed to call witnesses in a manner that took best advantage of the father's unpredictable telephone availability. On January 22, 2009, the father was denied telephone access due to the length of time he had been on the telephone the prior day.

under the protective orders, he was not permitted to send them to the child. The father has used alcohol and drugs, including cocaine, crack and marijuana, and was once arrested for possession of illegal substances. He claimed that he never used alcohol prior to visiting the child. The father is aware that his son, whose given name is the same as the father's, wants to change his name.

Ryan E. Williams, a department employee, prepared the report requested of the department and testified at trial. At the time of trial, Williams had visited with the child fourteen times and spoken to him outside of the mother's presence. Williams had visited the home that the child shared with the mother and had spoken with the child's pediatrician, school personnel and therapist. Williams wrote in his report, which was admitted into evidence: "According to [the mother], she has relocated her residence often as a result of trying to avoid [the father's] unorthodox, erratic and threatening behaviors toward her." The child's pediatrician reported that the child was in good health, and he had no concerns regarding the mother's ability to care for the child. School personnel reported that the child was a good student with no behavioral issues, and they had no concerns about the mother's ability to care for the child.

With respect to the child, Williams observed that the child "present[ed] as an engaging and articulate youngster who enjoys playing music, especially the violin. [The child] currently attends therapy in order to address issues concerning [the] father." According to the child's therapist, in November, 2007, the child was afraid of the father and was "apprehensive about recalling memories of [the] father." In the year that the child had been in therapy, the child had made progress overcoming anxiety about the father. The therapist thought that the child did not want to have contact with the father and that the child "sense[d] [the] mother's anxieties about [the father]." Williams indicated that the therapist believed that termination of the father's parental rights would be in the child's best interest.

According to Williams, the child informed him that he had no ongoing relationship with the father and that because of the father's threats to the mother that made her afraid, the child did not want to have a relationship with the father. The child stated that he "would feel safer if he knew [the] father could have no involvement with [him] or [the] mother." The child also told Williams that the father did not follow through with his promises and that the father missed many visits. The child also told Williams that he wanted to live with the mother to the exclusion of the father. The child and the father have the same first name, and the child wants to change his name so he will not be associated with the father.

With respect to the mother, Williams reported that she told him that the father had mentally and emotionally tormented her during their marriage and that she has been in counseling since 2001. The mother also is a client of the child's therapist, who described the mother "as a conscientious caretaker who has [the child's] . . . health and well-being as her main priority." The therapist told Williams

that she did not believe that it was a good idea for the child to reestablish contact with the father.

Williams spoke to the father, who was incarcerated at Riker's Island Prison in New York, in November, 2007. The father stated that his marriage to the mother ended "as a result of his substance abuse and mental health issues." According to Williams, the father "seemed to minimize the issues that caused the end of his marriage" and stated that the mother knew "the extent of my problem." The father admitted that he had problems that may have led the mother to keep the child from him. The father said that he was "not an evil person" and that despite what he had done in the past, he would like to have a relationship with his son.

The department recommended that the father's parental rights be terminated. The recommendation was based on the fact that the father "has failed to maintain a reasonable degree of interest, concern or responsibility for [the child's] welfare based on a pattern of volitional inconsistent, irresponsible, threatening and criminal behavior that has had a negative [e]ffect on [the child's] psycho-emotional well being."⁴ The department's "recommendation is further based on the fact that [the child] repeatedly reported to [Williams] that he has no desire to have a relationship with his father, based on [the father's] inconsistent, unorthodox, threatening and criminal behavior. . . . This [d]epartment's recommendation is believed to be in [the child's] best interests because allowing the re-establishment of the relationship between [the child] and [the father] would present a detriment to the child's psycho-emotional well being."

Williams also spoke with Bridget Reilly, domestic violence consultant, who had reviewed the parties' LINK history.⁵ In the case consultation, Reilly stated that "[d]ue to [the father's] threatening, emotional and psychological abuse, [the mother] has changed her name and [the child's] name for safety purposes at the recommendation of her former attorney." Reilly identified the following pattern of the father's coercive control and behaviors that created harm for the child and family: threatening to kill the mother and child, threatening to kill himself,

⁴ The department also recommended termination "based on the fact that [the child] has been denied the care, guidance, or control necessary for his physical, educational, moral, or emotional well-being by reason of acts of parental commission or omission by [the father], as evidenced by his inability to maintain consistent visitation with [the child], unresolved substance abuse issues that have had a negative psycho-emotional impact on the child, threatening behaviors, and criminal acts that have caused his current incarceration."

"There is also no ongoing relationship between [the father] and [the child] as a result of the . . . father's poor choices as they pertain to parenting his [child], and it appears as if to allow further time for the establishment or reestablishment of the parent/child relationship would be detrimental to [the child's] best interests, as [the father's] actions appear to be indicative of one who is irresponsible, emotionally neglectful, and indifferent as to what is in his child's best interests."

⁵ LINK is the name of the department's computer information base where domestic violence reports are stored and shared.

threatening to physically harm the mother and child, threatening that his “boys” will harm the mother and child, threatening to take the child from the mother, causing the mother to lose her job due to his threatening and erratic behaviors and threats to the mother and her co-workers, isolating the mother from family and friends by threatening to harm them and having his friends threaten them, causing the mother to purchase another car because she was warned that there was a tracking device in the one that she owned, repeatedly lying to the mother and driving fast and erratically when the mother and child were in the car to frighten them. The father’s verbal abuse included name-calling and put-downs.

The father stalked the mother by following her in his car and following her and the child after they had moved several times. The mother left New York to get away from the father. Due to the father’s threatening behavior, the mother will not go to New York state, which prevents her from going to medical specialists and compromises her career because she cannot take assignments in New York. Due to the father’s behaviors, the mother constantly is on the lookout for him and his friends, which causes her stress and anxiety.

Reilly found that the mother made the following efforts to support and to provide for the safety and well-being of the child. She safely planned for herself and the child by leaving the father, seeking orders of protection in the state of New York, applying for and receiving a long-standing restraining order in this state, changing her name and the child’s name and moving several times. The mother is the primary caretaker for the child. She has sought therapy for herself and the child and is appropriately attentive and supportive of the child’s healing process. The mother has sought to maintain a sense of normalcy and stability for the child, despite the father’s behaviors, by promoting extracurricular activities for the child such as camp, sports and music. The mother has a history of employment and has supported herself and the child without any financial support from the father. Despite the father’s attempts to isolate the mother, the mother has maintained a support system.

Reilly also identified the adverse impact of the father’s behavior on the child. The father has not visited his son for years and has not provided any financial support. When the father was granted supervised visitation, he often missed visits or showed up late. Visitation was stopped because the father behaved inappropriately with the child during visits, including dropping the child on one occasion. The child was upset that the father did not apologize for having dropped him and thought that his father had dropped him on purpose. When the father telephoned his son, the child imitated a dog, barking, growling, running and hiding to avoid talking to his father. When the mother was driving the child to visit his father, the child would take off his seat belt to get his mother to stop the car. The child wants to change his name because he does not want to be like his father and tells his friends that he does not have a father. The child constantly is on the lookout to make sure his father is not around. Due to stress, the child suffers from stomach pains and loss of appetite. The child believes that he must

take karate lessons so he can fight his father if the father tries to hurt him and the mother.

Reilly identified the following other facts that affect the mother's and child's risks and vulnerability. The father has a history of using crack cocaine, mental health problems and criminal behavior. The father has access to firearms and was arrested in January, 2007, while in possession of a firearm. At the time Reilly was completing her report, the father was incarcerated. Reilly concluded "from the LINK search and additional information provided by...Williams that [the father] continues to pose a significant risk to [the mother] and [child] and a termination of his parental rights is in the best interest of [the child's] physical and emotional well-being."

The mother testified that she and the father were married in 1999. She left the father in 2002 because of his drug addiction and his failure to complete successfully rehabilitation treatment. In August, 2001, she asserted, the father tried to kill her by crashing the car he was driving. He drove at speeds of 110 miles per hour, did not stop for stop signs or traffic signals. The father told the mother that she "wanted to be dead." The mother screamed out the car window until the police stopped the car. On another occasion, the father threatened her and her boss.

Due to the father's drug addiction, threats of suicide and threats to take the child away from her, the mother and the father agreed that the father's visits with the child would be supervised. At first, in December, 2002, the father visited the child regularly, but he began to miss visits without giving notice. He did not acknowledge the child's third birthday in May, 2003. As early as 2003, the child did not want to be associated with his father and wanted to change his name.

Pursuant to an order of the court, the father's telephone conversations with the child were recorded so that the court could review them to determine whether the father was speaking appropriately to the child. The court determined that portions of the father's conversations were inappropriate. When the father was incarcerated, he made no effort to renew telephone communication with his son.

After the father was released from incarceration, supervised visits, instead of telephone contact with the child, were arranged. The visits resumed in November, 2003, stopped and resumed in February, 2004. The visits were then stopped and resumed in August, 2004. Each set of visits lasted only a few weeks before the father ceased them.

In November, 2004, the father telephoned the mother to say that he was near a train and asked whether he should jump in front of it or go to a police station. He admitted to the mother that he had stolen another vehicle. He also told the mother that "she did not know what could happen to her going to and from" the child's school. The father threatened "to go postal."

The mother obtained orders of protection against the father. During one of the hearings, the father threatened her. The court suggested that the mother go to a shelter. The mother was unable to work because the father's threats made it dangerous to do so. The mother received compensation from a program for the victims of crime. After making the threats, the father was incarcerated and later released on probation. The mother obtained an order of protection that covered "everywhere she was." The father violated those orders by contacting her. The father said that the mother should be careful, that he could come and take the child and that she should keep her eyes open because people could follow her. The mother reported the threats to her attorney.

Prior to the parties' marriage, the father had joined Alcoholics Anonymous. When the mother became pregnant, the father disappeared on weekends to use crack cocaine. When the child was born, the father was scheduled to take the mother and child home from the hospital but did not appear. One of the father's sisters had to bring him to the hospital. There were periods of time when the father could not be found and when he made no effort to contact his son. To deal with his addiction problems, the father sought treatment without success in a variety of institutions in New York and Connecticut.

According to the mother, the father told her that he had "boys" who could take care of what he needed. The father had a confrontation with a boss at his then place of employment. Approximately six months passed, and the father told the mother that "his boys had taken care of the situation" and that he would not have any more problems with his boss.

The mother denied that she prevented the father from having contact with their child or that she had hidden the child from his father, although she admitted that she does not want the father to know where she and the child live. In 2002, the mother moved to Connecticut to live with the child's maternal grandmother, whose address the father knew, but from 2002 until 2009, the mother did not tell the father where she and the child were living. She and the child resided in a battered women's shelter between April and July, 2005. There was no court order requiring her to provide the father with her address, and all communication was to take place through the parties' attorneys. The court found attached to the mother's petition to terminate the father's parental rights a New York court order that there was "a full stay away order" against the father in effect through January 6, 2008.⁶

⁶ On October 10, 2007, the clerk of the Probate Court date-stamped a copy of an order entered in the office of the clerk of the family court of the state of New York in the county of Westchester. The decision of Hon. Thomas R. Daly, states in part: "[The father] filed for enforcement of an Order of Custody/Visitation. [The mother] submitted the within motion to dismiss on the basis that the Court lacks subject matter jurisdiction. The documents before the Court suggest that [the mother] filed a proceeding in Connecticut... .

"On or about April 11, 2003, the parties entered into a Consent Order of Custody and Visitation. The [mother] was granted permanent sole legal and physical custody of the child at issue

Following their divorce, the mother established a bank account into which the father was to deposit funds for the child's support. The father was present in court when the account was discussed and the matter decided. After two years had passed, the mother was told to close the account because the father had not made any deposits in the account. During the numerous court proceedings, the mother was represented by counsel. The father made no efforts, through counsel, to send the child letters, requests for telephone calls or visits. The father has not inquired about the child's health or well-being, schooling or extracurricular activities.

According to the mother, the child does not want to visit his father or speak to him on the telephone. She claimed that the child is "driving this." It is the child who does not want to have contact with this father, as his father makes the child feel guilty for being who he is, and the child had not done anything wrong. According to the mother, the child blames himself, but it is the father who has the problems.

The order further granted the [father] supervised visitation. The order provided that if the petitioner missed a visit without calling to cancel, he was to submit to a urine test within seventy-two hours of the scheduled visit. Pursuant to the order, [the father's] visitation would be suspended if he failed to submit to the urine test, or, if the test results were positive for alcohol or drugs. A suspension or termination of [the father's] visitation may only be restored by further order of the Court.

"[The mother] alleges that in May, 2003, [the father's] visitation was suspended after he missed a visit without cancellation and failed to appear for a urine test pursuant to the order. [The mother] further states that in February, 2004, [the father] sought to reinstate visitation with the child. [The mother] indicates that numerous temporary orders of supervised visitation were provided to [the father] and each time, visitation was terminated due to 'uncooperative behavior or non-compliance with the rules of the agency.' [The mother] subsequently filed a Family Offense Proceeding, and [the father] filed for a Modification of Custody and Visitation. The matter was transferred to this Court in or about June, 2005.

On or about January 6, 2006, a Permanent Order of Protection was issued against [the father] for [the mother] and the subject child....The Order of Protection includes a full stay away order and is in effect until January 6, 2008. The [father's] modification petition was denied.

"The instant petition was filed on approximately May 15, 2007. The . . . father seeks to modify the Order of Custody/Visitation. [The mother] made a limited appearance with counsel for the purpose of submitting the present motion to dismiss." (Citation omitted.)

Judge Daly dismissed the father's petition to modify custody/visitation for lack of jurisdiction. The court found "that an action was commenced in the State of Connecticut approximately one month prior to the commencement of the within action [and] that New York no longer has exclusive, continuing jurisdiction over this matter. Thus, Connecticut is free to entertain jurisdiction over custody and visitation of the subject child."

Eric Frazer, a court-appointed psychologist, conducted an evaluation of the child and testified at trial.⁷ The court qualified Frazer as an expert in the field of forensic psychology, custody evaluations and parental alienation. Frazer met with the child once, outside the presence of the mother or father. Frazer defined parental alienation “as a circumstance where one parent portrays the other parent in a negative light, and the child takes note of such portrayal. The child has less or no contact with the alienated parent based on the perception put forth by the other parent.”

Frazer found that the child portrayed the father in a somewhat confused way with altering perceptions. The child believes that his father was to be feared, that his father caused him to bump his head and that his father was going to abduct him. Frazer concluded that the child had formulated opinions about his father on the

⁷ The parties met with the court services officer to determine the questions to which the psychologist should respond. The memorandum to the psychologist, which was prepared by counsel for the father, was filed on September 15, 2008, and states:

“HISTORY

“This is a probate court action brought by the mother asking the court to terminate the parental rights of the father. The [commissioner of children and families] is not a party to this matter.

“This 8 year-old child has had no contact with his father since 2004. The mother moved from NY in that year to CT and changed her name and the name of their son. She claimed the father represented a danger to the child. The father disputes this and claims that his supervised visits with the child were appropriate until they were ended by the mother’s moving. The mother has been the sole custodian of the child since their divorce in 2002.

“The parties hope that the results of a professionally-guided clinical interview with the child will resolve the issue of whether re-initiating contact with his father would be inimical to the child. The following assumptions may be made:

“-- both parents love their son

“-- both parents will acknowledge and accept the court’s finding of the best interest of the child

“ -- the parents have widely differing views of their effectiveness as parents of their son

“-- the mother wishes to terminate the parental rights of the father thereby legally ending his legal rights and obligations to the child

“-- the father wishes to maintain his obligations and rights to the child

“-- both parents are represented by counsel and fully understand their rights in this proceeding.

“QUESTIONS

“1. What is the status of the child’s memory of his father?

“2. What does the child believe about his father?

“3. How did the child come to hold these beliefs?

“4. Does it make any difference how the child came to these beliefs in view of the totality of the circumstances that has resulted in a separation of the father and the child for more than half the child’s life?

“The parties have knowingly limited the information available to the evaluator for this interview. They did this in the belief that if the child had no positive memories of his father that given the length of alienation and the age of the child a reunification may not be appropriate.”

basis of what his mother had told him. According to Frazer, the child had positive recollections of some interactions with his father, such as when his father brought him toys or they played on a computer in a library. Frazer observed that the child has a polarized view of his father. The child was afraid to have contact with his father but thought that if the meeting were held in a safe place, such as a doctor's office, it would be okay to have contact with him.

During Frazer's evaluation, the child narrated a coparenting fantasy in which the mother prepared dinner and the father helped the child with his homework. Frazer concluded that the child wanted to have some type of relationship with the father and that the child could envision the nature of such a relationship; the child had at least some positive memories of the father, as the child disclosed positive experiences rooted in contextual information that the child portrayed positively and projected into positive experiences. The idea that the mother reinforced the child's positive memories of the father is completely inconsistent with the mother's approach to the child and the father. The child's references to a father or father figure in his fantasy are to his biological father.

At the conclusion of the evidence, the court ordered that transcripts be made available to the parties and ordered the parties to submit posttrial briefs three weeks after the transcripts were available. The court issued an amended memorandum of decision on March 9, 2009. The court found by clear and convincing evidence that the mother had proven with respect to the father that "the child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern, *or* responsibility as to the welfare of the child...." (Emphasis in original; internal quotation marks omitted.); see *also* General Statutes §45a-717(g)(2)(A).⁸ In making its finding, the court noted, pursuant to Practice Book §35a-7(a), that "[i]n the adjudicatory phase, the judicial authority is limited to evidence of events preceding the filing of the petition or the latest amendment...." The court noted that "[a]bandonment focuses on the parent's conduct." In re Kezia M., *supra*, 33 Conn. App. 17. The court found that as of the date of the mother's petition to terminate the father's parental rights, March 19, 2007, the father had abandoned the child, including failing to provide financial support.⁹

The court then turned to the dispositional phase of a termination of parental rights adjudication and made the findings required by §45a-717 (h). The court concluded that the "father's mental health issues, his history of substance abuse, his emotional abuse, threats and other behavior intended to control, frighten and

⁸ The court found that the mother failed to prove that the child had been denied, by reason of parental acts of commission or omission, the care, guidance or control necessary for the child's well-being and that she failed to prove that there was no ongoing parent-child relationship. See General Statutes § 45a-717(g).

⁹ The court also found that the father's abandonment continued through the end of the termination of parental rights trial.

at times terrorize the mother have made it impossible for him to have a relationship with [the child] because, inter alia, he has destroyed his relationship with [the child's] primary caretaker, the mother. It is thus in [the child's] best interest to terminate the father's parental rights." In reaching this conclusion, the court noted that "[i]n a case tried before a court, the trial judge is the sole arbiter of the credibility of the witnesses and the weight to be given specific testimony." (Internal quotation marks omitted.) In re Davonta V., 285 Conn. 483, 488, 940 A.2d 733 (2008). The court ultimately found that it was in the best interest of the child to terminate the father's parental rights. The court ordered that the mother shall be the child's sole guardian. The father timely filed an appeal.

I

The father claims that the court's findings that (1) he had abandoned the child and (2) it was in the best interest of the child to terminate his parental rights were clearly erroneous. We do not agree.

"Our standard of review on appeal from a termination of parental rights is whether the challenged findings are clearly erroneous....The determinations reached by the trial court that the evidence is clear and convincing will be disturbed only if [any challenged] finding is not supported by the evidence and [is], in light of the evidence in the whole record, clearly erroneous....On appeal, our function is to determine whether the trial court's conclusion was legally correct and factually supported. (Internal quotation marks omitted). In re Cheila R., 112 Conn. App. 582, 589, 963 A.2d 1014 (2009). "A finding is clearly erroneous when either there is no evidence in the record to support it, or the reviewing court is left with the definite and firm conviction that a mistake has been made....[G]reat weight is given to the judgment of the trial court because of [the trial court's] opportunity to observe the parties and the evidence....[An appellate court does] not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached....[Rather] ever reasonable presumption is made in favor of the trial court's ruling." (Internal quotation marks omitted.) In re Jordan R., 293 Conn. 539, 558-59, 979 A.2d 469 (2009).

"The legal framework for deciding termination petitions is well established. [A] hearing on a petition to terminate parental rights consists of two phases: the adjudicatory phase and the dispositional phase. During the adjudicatory phase, the trial court must determine whether one or more of the . . . grounds for terminal of parental rights set forth in [General Statutes] §17a112 [or §45a-717 (g)] exists by clear and convincing evidence. . . . If the trial court determines that a statutory ground for termination exists, then it proceeds to the dispositional phase. During the dispositional phase, the trial court must determine whether termination is in the best interests of the child. . . . The best interest determination also must be supported by clear and convincing evidence." (Citations omitted; internal quotation marks omitted.) In re Davonta V., *supra*, 285 Conn. 487-88.

The father's first claim is that the court's finding that he abandoned the child is clearly erroneous.¹⁰ We do not agree.

General Statutes §45a-717(g) provides in relevant part: "[T]he court may appoint a statutory parent, if it finds, upon clear and convincing evidence, that (1) the termination is in the best interest of the child, and (2) (A) the child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child" In this case, we conclude that the court's factual findings, by clear and convincing evidence, support its conclusion that the father abandoned the child by failing to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare.

"Abandonment focuses on the parent's conduct....A lack of interest in the child is not the sole criterion in determining abandonment....[Section]45a-717[g]¹¹ defines abandonment as the fail[ure] to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child....Attempts to achieve contact with a child, telephone calls, the sending of cards and gifts, and financial support are indicia of interest, concern or responsibility for the welfare of a child....Abandonment occurs where a parent fails to visit a child, does not display love or affection for the child, does not personally interact with the child, and demonstrates no concern for the child's welfare.

...

"Section 45a-717 [(g)(2)(A)] does not contemplate a sporadic showing of the indicia of interest, concern or responsibility for the welfare of a child. A parent must maintain a reasonable degree of interest in the welfare of his or her child. Maintain implies a continuing, reasonable degree of concern. ..."

¹⁰ We understand the father's claim to be that, when a parent has been prevented from having contact with a child, a finding of abandonment seems anomalous. Termination on the ground of abandonment when one parent alienates the child from the other parent also raises significant issues. Given the circumstances of this case, however, the fact that the mother took steps to protect herself and the parties' child from the father does not undermine the court's finding of abandonment. We note that there is no finding that the mother actively impeded the father's visits with the child. There are findings that the father had been subject to court orders of protection, including one that was in effect when the termination petition was filed, he knew where his mother-in-law lived and the mother had been forced to seek refuge in a shelter as a consequence of the father's behavior. Aside and apart from his claim that he was prevented from seeing his child, the father's conduct, viewed as a whole, including his threatening behavior, his disruptive behavior and his failure to provide financial support for his child, do not support the proposition that he maintained a reasonable degree of interest, concern or responsibility as to the welfare of his child.

¹¹ Section 45a-717(g) previously was codified in §45a-717(f). See *In re Ashley E.*, 62 Conn. App. 307, 312-13, 771 A.2d 160, cert. denied, 256 Conn. 910, 772 A.2d 601 (2001).

“The commonly understood general obligations of parenthood entail these minimum attributes: (1) express love and affection for the child; (2) express personal concern over the health, education and general well-being of the child; (3) the duty to supply the necessary food, clothing, and medical care; (4) the duty to provide an adequate domicile; and (5) the duty to furnish social and religious guidance.” (Citations omitted; emphasis added; internal quotation marks omitted.) In re Ashley E., 62 Conn. App. 307, 314–15, 771 A.2d 160, cert. denied, 256 Conn. 910, 772 A.2d 601 (2001). While the father’s imprisonment alone does not constitute abandonment, it does not excuse his failure to attempt either to contact or to visit his son. See *id.*, 315. ”

We conclude, on the basis of our review of the record, that the court’s finding that the father had abandoned the child was not clearly erroneous. Although the father suffers from substance abuse and mental health issues, he has engaged in criminal activity that caused him to be incarcerated and detained by the immigration service during the child’s life. While he was in prison, the father failed to take advantage of programs that would have permitted him to maintain contact with the child. The father’s sporadic visits and telephone calls do not constitute the type of interest, concern or responsibility expected of a father who has maintained a reasonable degree of interest and concern in his child. Not only did the father fail to provide financial support and to maintain regular visits and communication with the child, but also his threatening conduct toward the mother compelled her to secure orders of protection, precluding him from having contact with his son. Although the father has expressed a desire to have a positive relationship with his son, by his conduct, he has abandoned the child by failing to be a responsible parent in the manner contemplated by our child welfare statutes.

B

The father’s second claim is that the court’s finding that termination of his parental rights was in the best interest of his son was clearly erroneous. We disagree.

“If the court finds that the petitioner has proven by clear and convincing evidence that one of the statutory grounds for termination of parental rights exists, it must then determine whether termination is in the best interests of the child. . . . The best interests of the child include the child’s interests in sustained growth, development, well-being, and continuity and stability of its environment. . . . In the dispositional phase of a termination of parental rights hearing, the trial court must determine whether it is established by clear and convincing evidence that the continuation of the respondent’s parental rights is not in the best interest of the child. In arriving at this decision, the court is mandated to consider and make written findings regarding seven factors delineated in [§45a-717 (h)].” (Citations omitted; internal quotation marks omitted.) In re Anthony H., 104 Conn. App. 744, 763-64, 936 A.2d 638 (2007), *cert. denied*, 285 Conn. 920, 943 A.2d 1100 (2008).

After finding that the father had abandoned the child, the court made the factual findings required by §45a-717(h).¹² The court found that the child is eight years and ten months old and that it was unaware of any services offered to the father and child by a child-placing agency to facilitate the reunion of the child with the father. The court also was unaware of any court order entered into and agreed on by any child-placing agency and the father. The court found that the child is very closely bonded and loyal to his mother. The child does not have many independent memories of his father but has some hopes, dreams and fantasies about how things would be if he could have safe, supervised visits with his father. The child shares his mother's fears about the father because such fears are of continuing concern to the mother.

Moreover, the court found that since the parties separated, the father has not been able to adjust his circumstances, conduct or conditions to maintain consistent visits and other contact with his son due to his substance abuse, mental health issues and behavior, including, but not limited to, having made threats against the mother, threatening to abduct the child, being incarcerated and detained due to criminal activity and having protective orders entered against him. The father has not been prevented from maintaining a meaningful relationship with the child by the *unreasonable* act or conduct of the mother. The court found that the "father's mental health issues, his history of substance abuse, his emotional abuse, threats and other behavior intended to control, frighten and at times to terrorize the mother have made it impossible for him to have a relationship with [the child] because, inter alia, he has destroyed his relationship with [the child's] primary caretaker, the mother."

The court considered the best interest of the child in terms of the child's maintaining a legal relationship with his father and whether it is in the child's best interest to be reunited with his father, including whether the father, in a

¹² General Statutes §45a-717(h) provides: "Except in the case where termination is based on consent, in determining whether to terminate parental rights under this section, the court shall consider and shall make written findings regarding: (1) The timeliness, nature and extent of services offered, provided and made available to the parent and the child by a child-placing agency to facilitate the reunion of the child with the parent; (2) the terms of any applicable court order entered into and agreed upon by any individual or child-placing agency and the parent, and the extent to which all parties have fulfilled their obligations under such order; (3) the feelings and emotional ties of the child with respect to the child's parents, any guardian of the child's person and any person who has exercised physical care, custody or control of the child for at least one year and with whom the child has developed significant emotional ties; (4) the age of the child; (5) the efforts the parent has made to adjust such parent's circumstances, conduct or conditions to make it in the best interest of the child to return the child to the parent's home in the foreseeable future, including, but not limited to, (A) the extent to which the parent has maintained contact with the child as part of an effort to reunite the child with the parent, provided the court may give weight to incidental visitations, communications or contributions and (B) the maintenance of regular contact or communication with the guardian or other custodian of the child; and (6) the extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person or by the economic circumstances of the parent."

noncustodial way, reasonably could be expected and relied on to provide the safe, secure, nurturing, stable and permanent environment idealized in the statutes and case law and the child's "interests in sustained growth, development, well-being, and continuity and stability of ...environment." (Internal quotation marks omitted.) In re Ryan R., 102 Conn. App. 608, 625-26, 926 A.2d 690, cert. denied, 284 Conn. 923, 924, 933 A.2d 724 (2007). The court found, however, that it was in the best interest of the child to terminate the father's parental rights. On the basis of our review of the record, we conclude that the court's finding that it was in the child's best interest to terminate the father's parental rights was not clearly erroneous.

II

The father's third claim is that the court violated his right to due process by denying his motion for a continuance on the second day of trial when the immigration service denied him access to a telephone so he could participate in the trial. We do not agree.

The father's claim is an issue of law for which our standard of review is plenary. See In re Shaquanna M., 61 Conn. App. 592, 600, 767 A.2d 155 (2001).

Several months prior to the start of trial, which was scheduled to and did begin on January 21, 2009, the father's counsel informed the court that the father was being detained by the immigration service. The father was detained after he was convicted of a second felony that he had committed while termination proceedings were pending. The father was able to participate in the entire first day of the termination trial via telephone. Apparently, at the start of trial, the court, counsel and the parties were unaware of the amount of time that the father would be available via telephone. The uncertainty of the father's availability was taken into account in the ordering of the testimony of the witnesses. The mother's counsel called the father as her first witness.

The transcript of the second day of trial reflects that both the court and the father's counsel had been informed by the immigration service that the father would not have access to a telephone that day. The father's counsel asked the court to continue trial until the father's telephone privileges were restored. Counsel for the mother objected, stating that the father was being detained as a consequence of his own volitional acts. The father's counsel was unable to inform the court when the father would be available by telephone again. The court denied the motion for a continuance, noting that "the place where the father is in detention . . . is very unhappy about the amount of time that the father took on the telephone yesterday. And I don't want to speculate, but, if, in fact, you were able to arrange anything, it wouldn't be for a significant period of time, seemingly based on the report received or the message received by the [court] clerk."

Thereafter, counsel for the father called his only witness, Frazer, the court-appointed psychologist.¹³ Frazer had prepared a report that was filed in court on September 30, 2008. At the conclusion of the evidence, the court stated that the father's counsel could make the transcript available to the father subject to the confidentiality required by General Statutes §46b-124. The parties were to submit their posttrial briefs three weeks following their receipt of the transcript.¹⁴ Thereafter, the father filed no motions or requests to reopen the evidence.

Ordinarily, we resolve claims concerning the denial of a motion for a continuance under the abuse of discretion standard. See Heyse v. Case, 114 Conn. App. 640, 654, 971 A.2d 699, cert. denied, 293 Conn. 905, 976 A.2d 705 (2009). The substance of the father's claim, however, concerns due process. We resolve due process claims pursuant to Mathews v. Eldridge, 424 U.S. 319, 334–35, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

“The United States Supreme Court analyzes claims of procedural due process in accordance with the three part test set forth in [Mathews v. Eldridge, *supra*, 334–35]. The Connecticut Supreme Court uses the same test. Sassone v. Lepore, 226 Conn. 773, 781, 629 A.2d 357 (1993). That test requires a consideration of the private interest that will be affected by the official action, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” (Internal quotation marks omitted.) Santana v. Hartford, 94 Conn. App. 445, 469–70, 894 A.2d 307 (2006), *aff'd*, 282 Conn. 19, 918 A.2d 267 (2007). Stated differently, we must determine if the private interest of the father in the companionship, love and control of the child is at risk of being erroneously terminated because of the lack of an adequate procedural safeguard that could be provided for him without disregarding the state's interest in the well-being of the child and the fiscal and administrative burden on the state. See In re Alexander V., 25 Conn. App. 741, 744–45, 596 A.2d 934 (1991), *aff'd*, 223 Conn. 557, 613 A.2d 780 (1992); see also In re Lukas, 120 Conn. App. 465, 473–74, A.2d (2010).

“Due process does not mandate full evidentiary hearings on all matters, and not all situations calling for procedural safeguards call for the same kind of procedure. . . . So long as the procedure afforded adequately protects the individual interests at stake, there is no reason to impose substantially greater burdens . . . under the guise of due process.” (Citation omitted; internal quotation

¹³ Frazer, whose services were being provided by the state, was in the courtroom ready to testify on the second day of trial.

¹⁴ Addressing the father's counsel, the court stated, “[I]f you need to share the transcript with your client, as long as he understands the confidentiality, given your circumstances, it can go out to New Mexico or a copy of it can go out to New Mexico.”

marks omitted.) GMAC Mortgage Corp. v. Glenn, 103 Conn. App. 264, 275, 931 A.2d 290 (2007). “The bottom-line question is whether the denial rendered the [proceeding] fundamentally unfair in view of the Mathews factors.” In re Shaquanna M., *supra*, 61 Conn. App. 606. The balancing test of Mathews v. Eldridge, *supra*, 424 U.S. 334-35, does not support the father’s claim of a due process violation for the following reasons.

The facts of this case are similar to those of the putative father in the case of In re Juvenile Appeal (Docket No. 10155), 187 Conn. 431, 446 A.2d 808 (1982), which guides us in the resolution of the father’s due process claim here. In In re Juvenile Appeal (Docket No. 10155), the putative father left the state to avoid an anticipated arrest for assault. *Id.*, 433. He subsequently was arrested in California on an unrelated charge, convicted and imprisoned. *Id.* The putative father tentatively was scheduled to be released in July, 1980. *Id.* The child in that case, Jesse, was cared for by his maternal grandmother after his mother’s death. *Id.* The grandmother later decided that she was unable to care for Jesse and asked the state to find a permanent placement for him. *Id.*, 434. The state subsequently sought to terminate the parental rights of the putative father. *Id.* The putative father sought a continuance of the termination trial, which occurred on December 20, 1979, until he was released from prison. *Id.* The motion for a continuance was denied. *Id.*

On appeal to our Supreme Court, the putative father claimed that the denial of his motion for a continuance so that he could be present at the trial was a denial of his right to due process. *Id.* In applying the Mathews balancing test, our Supreme Court concluded that the putative father’s “interest in retaining his parental rights to his son, is clearly both compelling and constitutionally protected.” *Id.*, 436. So, too, in this case, are the father’s parental rights as to the child both compelling and constitutionally protected.

As in the case of the putative father in In re Juvenile Appeal (Docket No. 10155), the second factor under Mathews, the risk of error occasioned by the father’s absence from the second day of the hearing, is crucial to his claim.¹⁵ See *id.* In In re Juvenile Appeal (Docket No. 10155), “the state’s principal witness, Jesse’s maternal grandmother, testified and was cross-examined by the [putative father’s] counsel. A complete transcript of that hearing was then sent to the [putative father], who discussed the witness’ testimony with his counsel by telephone.” *Id.*, 437. “Although the court had offered [the putative father] the option of deferring cross-examination [of the maternal grandmother] entirely until the [putative father] had an opportunity to see the transcript, he elected instead to have his counsel cross-examine immediately with a reserved right to ask additional questions at the second hearing. Since the [putative father] did not, in

¹⁵ In the case of In re Juvenile Appeal (Docket No. 10155), the putative father was unable to participate in the termination trial by any means, and he was not present. In re Juvenile Appeal (Docket No. 10155), *supra*, 187 Conn. 436.

fact, avail himself of this opportunity, we may assume that he was satisfied with the results of the initial cross-examination.”¹⁶ *Id.*, 437-38. Our Supreme Court found “no link between [the putative father’s] absence during cross-examination and an increased risk of error”; *id.*, 438; in the outcome.

On appeal, the putative father argued that due to his absence at trial, he was not able to assist in cross-examining Jesse’s maternal grandmother. *Id.*, 437. Our Supreme Court found that argument wanting because the putative father failed to establish what assistance he might have provided his counsel had he been present. *Id.* The putative father acknowledged that he had had adequate time to peruse the testimony of Jesse’s maternal grandmother and to consult with his attorney; *id.*; and he failed to take advantage of the court’s offer to defer cross-examination until he had reviewed the transcript. Our Supreme Court “assumed that [the putative father] was satisfied with the results of the initial cross-examination.” *Id.*, 438.

The father in the case before us also has failed to explain how his absence during the second day of trial when Frazer, his own witness, testified about his evaluation of the child, not the father, violated his right to due process. Frazer’s report was available to the parties some months before trial, and we presume that the father had an opportunity to review it and to discuss it with his counsel.¹⁷ The court made the trial transcript available to the father, and we presume that he had the opportunity to review it. The father filed no motions or requests to open the evidence to reexamine Frazer. Moreover, the court’s termination of the father’s parental rights is grounded, not in Frazer’s testimony, but in its factual findings regarding the father’s conduct, the child’s best interest and its credibility determinations. We therefore find no discernible link between the father’s absence during the second day of trial and an increased risk of error in the outcome. *See id.*

The third Mathews factor concerns “the function involved and the fiscal and administrative burdens placed on the government by securing the respondent’s presence at the termination hearing” *Id.*, 439. The government function in terminating parental rights “is an aspect of [the state’s] role as *parens patriae*.” *Id.* “It is important to note in this relation that the ultimate standard underlying the whole statutory scheme regulating child welfare is the best interest of the child.” (Internal quotation marks omitted.) *Id.* “The public policy of this state is: To protect children whose health and welfare may be adversely affected through injury and neglect; to strengthen the family and to make the home safe for

¹⁶ “Further, there is no claim that the [putative father’s] counsel was an inadequate representative or that the cross-examination that occurred was in any way defective or incomplete.” *In re Juvenile Appeal* (Docket No. 10155), *supra*, 187 Conn. 438. The father here has not claimed that his counsel failed to represent him adequately.

¹⁷ The mother asserted in her brief that the father had an opportunity to review Frazer’s report. The father failed to challenge this assertion in his reply brief.

children by enhancing the parental capacity for good child care” General Statutes §17a101 (a). “Time is of the essence in child custody cases. . . . This furthers the express public policy of this state to provide all of its children a safe, stable nurturing environment.” (Citation omitted; internal quotation marks omitted.) In re Juvenile Appeal (Docket No. 10155), *supra*, 187 Conn. 439-40.

In this case, the balance tips in favor of the state’s role in protecting the child. At the time of the trial, the father was being detained by the immigration service after the father was convicted of a second felony involving moral turpitude. At the time the father asked for a continuance – on the second day of trial, when the witness who was being paid by the state was in the courtroom ready to testify – the father did not expect the immigration service to make a decision about his immigration status for several more months. The father’s counsel also did not know when the father’s telephone privileges would be restored. Under the circumstances, the court’s desire to avoid potentially significant delay was appropriate.

“A motion for continuance is addressed to the discretion of the trial court, and a ruling on a motion for continuance will not be upset absent a showing of clear abuse of that discretion.” In re Juvenile Appeal (852), 3 Conn. App. 184, 189, 485 A.2d 1362 (1985). “In the absence of a mechanical test for determining when a denial of a continuance is so arbitrary as to violate due process, the answer must be found in the circumstances of the case, with particular emphasis on the reasons presented to the trial judge at the time the request is denied.” *Id.* Our Supreme Court has “articulated a number of factors that appropriately may enter into an appellate court’s review of a trial court’s exercise of its discretion in denying a motion for a continuance. Although resistant to precise cataloguing, such factors revolve around the circumstances before the trial court at the time it rendered its decision, including: the timeliness of the request for continuance; the likely length of the delay, the age and complexity of the case; the granting of other continuances in the past; the impact of delay on the litigants, witnesses, opposing counsel and the court; the perceived legitimacy of the reasons proffered in support of the request; [and] the defendant’s personal responsibility for the timing of the request” (Internal quotation marks omitted.) State v. Nelson, 118 Conn. App. 831, 843, 986 A.2d 311, *cert. denied*, 295 Conn. 911, A.2d (2010).

Under the circumstances of this case, the primary governmental interest the court had to consider was whether a trial delay was in the best interest of the child. The mother had filed the petition to terminate the father’s parental rights in March, 2007. Thereafter the father filed a motion to transfer the matter to the juvenile division of the Superior Court and requested a psychological evaluation of the child. The father’s counsel knew in October, 2008, that the father was being detained and that the trial was scheduled to commence on January 21, 2009. The father was detained by the immigration service as a result of his criminal behavior that occurred while the petition to terminate his parental rights

was pending. The father testified and heard the testimony presented during the first day of trial via telephone. The father's counsel offered an oral motion for continuance on the second day of trial. Like the putative father in In re Juvenile Appeal (Docket No. 10155) who expected to be released from prison at some unknown time in the future, the father expected a decision about his immigration status to be made at an unknown time in the future. More seriously, the father faced the prospect of being deported, not just released from detention. Importantly, the court had to balance the rights the child had in a timely decision regarding permanency in his life.

The child was fearful of the father's threatening behavior, and the mother filed the petition to terminate the father's parental rights, in part, because the child wanted the threats that his father represented removed from his life. The court found the mother's testimony to be credible. We cannot say that a delay would have placed a severe financial burden on the state, but Frazer, a state paid witness, was in the courtroom prepared to testify. The financial burden to the state, however, pales in the face of the state's *parens patriae* interest in the best interest of the child. "Because of the psychological effects of prolonged termination proceedings on young children, time is of the essence in custody cases." In re Alexander V., *supra*, 25 Conn. App. 748.

On the basis of our review of the record and weighing of the three Mathews factors, we conclude that there was little risk of error as to the father's private interest created by his absence from the second day of trial "and the probable value, if any, of additional or substitute procedural safeguards" In re Juvenile Appeal (Docket No. 10155), *supra*, 187 Conn. 436. We conclude that the Mathews balancing test weighs in favor of the state under the facts of this case. We therefore cannot say that the denial of the father's motion for a continuance rendered the termination proceeding fundamentally unfair.

The judgment is affirmed.

In this opinion the other judges concurred.

MENU OF EXPECTATIONS FOR BATTERERS IN CHILD PROTECTION CASES WHERE DOMESTIC VIOLENCE IS PRESENT¹

1. No further physical violence towards any member of the household (includes pets).

Purposes: To set clear boundaries around future violence. To end physical harm and fear of further violence for all members of the household.

Success: No reported violence by any member of household, extended family members or other witnesses, and no observed indication of violence, *i.e.*, bruises. No new arrests.

2. No further intimidating behavior towards any member of household. This includes verbal threats, defined or undefined, destruction of property, throwing objects, punching walls, etc.

Purpose: To end climate of fear in the household.

Success: No reported intimidating or threatening behavior. No reported or observed damage to household, especially holes in wall, etc. Worker will look for missing or broken objects in household. Household members will be interviewed for presence of threats or intimidating behavior.

3. All weapons will be removed from the premises including guns, bows and arrows, shotguns, hunting rifles. The weapons will need to be sold or given to law enforcement for safekeeping.

Purpose: To reduce likelihood that identified weapons will be used to assault or intimidate members of the household.

Success: Batterer will produce bill of sale or receipt from police.

4. Seek out an evaluation and comply with recommendations of domestic violence counseling to address issues of control and abuse. Anger management or couples' counseling will not be accepted as treatment in domestic violence cases. The treatment will have as its goals:

- a. The cessation of violent, abusive and controlling behaviors towards the adult partner/mother.
- b. The cessation of violent and abusive behaviors toward any children in the home.

¹ V. 2. December 2, 2003 Working Draft Non-Violence Alliance www.endingviolence.com
1.860.347.8220

- c. Education about the effects of violence, abuse and controlling behaviors on family members.**
- d. Collateral contact with the adult victim and the referring agencies for exchange of information about the purpose and limitations of the counseling; the batterer's pattern of abuse and violence and other relevant information about the batterer.**

Purpose: To engage batterer in appropriate counseling with the goal of ending coercive control and physical violence over family. To obtain a professional evaluation of a client's motivation to change abusive behavior, and his understanding of the impact of his abusive behaviors.

Success: Completion of required evaluation and (when recommended) counseling sessions. Reports from victim and children that abusive behavior has ended. Victim reports greater safety and freedom. Commonly recommended lengths of counseling range from six months to one year. Actual length of counseling determined on an individual basis.

5. Will not use physical discipline with children.

Purpose: To create clear boundaries around discipline in order to prevent child abuse.

Success: No bruises or other indications of physical discipline. No reports from anyone in the family of further physical discipline.

6. Will be able to acknowledge a majority of past abusive and violent behavior towards partner and children, which will include:

- a. Detailing the abusive nature of specific actions, physical and non-physical**
- b. Display an understanding of the impact of these behaviors on his partner, children and himself**
- c. Display an ability to discuss his own abusive actions without blaming others or outside circumstances for his behavior**
- d. Be able to demonstrate non-abusive, non-violent behavior when in prior similar circumstances he would have become violent or abusive.**

Purpose: The batterer will be able to demonstrate to others, including DCF workers and family members, non-abusive behavior and a sense of responsibility for his own abusive behavior.

Success: Can do the above things.

7. When necessary, the batterer will seek and follow recommendations of substance abuse evaluation.

Purpose: While substance abuse does not cause domestic violence, it co-occurs with domestic violence in many batterers. Substance abuse, when suspected, must be addressed through a separate evaluation and counseling process from the domestic violence. Active substance abuse may increase the batterer's dangerousness and/or inhibit his ability to benefit from domestic violence counseling.

Success: When there is an identified substance abuse problem, the batterer remains clean and sober. The substance abuse evaluator indicates no need for substance abuse treatment.

8. The batterer will stay involved with any mental health counseling, and follow doctor's recommendations, including taking prescribed medications.

Purpose: While mental health issues (e.g. depression) do not cause domestic violence, they can co-occur with domestic violence in batterers. Untreated mental issues may increase the dangerousness of the batterer and/or hinder his ability to engage in domestic violence counseling.

Success: The batterer maintains his recommended mental health treatment regimen, e.g. counseling sessions, medications.

9. The batterer will not deny partner access to phone, vehicle or other forms of communication and transportation.

Purpose: The batterer cannot isolate the adult victim/children from access to friends, family, and employment by controlling communication and transportation.

Success: The victim/children report access to existing communication and transportation resources. Social worker observes access to existing communication and transportation resources.

10. The batterer will share with partner all information relevant to income and family financial circumstances.

Purpose: This expectation is intended to reduce the batterer's financial control over his partner and the family.

Success: The batterer provides the victim with pay stubs and information on bank accounts and other assets.

11. The client will disclose to partner all information relevant to child abuse and domestic violence, including prior arrests, open cases with other children with DCF, probation.

Purpose: In order to maintain control or avoid negative consequences, batterers will often lie or withhold information from his partner. Requiring him to share information about his prior criminal history, current criminal justice involvement, domestic violence and/or child abuse history will provide the partner with information relevant for her risk analysis and safety planning.

Success: The partner reports that the batterer has shared with her all known information about his prior criminal history, current criminal justice involvement, domestic violence and/or child abuse history.

12. If separated, no unwanted or unexpected visits to partner's home or office (can include her family or other identified relatives).

Purpose: Batterers regularly attempt to pressure or coerce a partner who has left to return to him. This behavior can be very threatening and lead to physical violence.

Success: No reports of threatening or harassing behaviors.

13. Respect all existing court orders, including protective, restraining, custody and visitation and child support orders.

Purpose: Batterers often defy court orders. Including "respect all existing court orders" in child protection expectations underscores the importance of those orders to the safety and well-being of the children and emphasizes the need for the client to comply with other court orders as a condition of complying with DCF and/or juvenile court.

Success: All reports (partner, other courts) indicate that the batterer is complying with all existing court orders.

14. In lieu of formal child support order, the batterer will maintain financial support for his children regardless of whether he resides with them or not.

Purpose: To reduce the batterer's ability to control or coerce his partner through financial pressure. To articulate the expectation that the batterer will provide for the basic needs of his children regardless of the status of his relationship with their mother.

Success: The social worker verifies that the batterer is maintaining his financial support of his children.

15. The batterer will support all reasonable efforts to provide his child(ren) with appropriate services including childcare, healthcare (e.g. well-baby visits). The batterer will not interfere with the other parent's efforts to seek out services for themselves and the children.

Purpose: To articulate the expectation that the batterer will provide support for the physical and emotional needs of his children regardless of the status of his relationship with their mother. To prevent isolation of mother and children from necessary services.

Success: The partner/children report access to services.

10 ITEM CHECKLIST ABOUT THE INTERSECTION OF DOMESTIC VIOLENCE, SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES

David Mandel

1. What is the relationship between domestic violence, substance abuse, mental health issues?
2. How has the batterer's behavior created or exacerbated mental health/behavioral health and/or substance abuse issues for the adult survivor and/or child?
3. What is the relationship between the batterer's abusive behavior and any of his mental health and/or substance abuse issues?
4. How is the batterer interfering with/supporting the treatment and recovery of family members?
5. How are family members more vulnerable to the batterer because of their mental health and/or substance abuse issues?
6. How is child welfare assessing for domestic violence when the presenting issue is adult or child behavioral/mental health/ substance abuse?
7. What are important case plan steps when domestic violence is co-occurring with substance abuse and/or mental health issues?
8. What are skill level/policy/practices of substance abuse and mental service providers regarding assessing for domestic violence, safety planning and the integration of co-occurring issues into their treatment plan?
9. What information do mental health and substance treatment providers have access to regarding the domestic violence?
10. What is the training and skill level of mental health or substance abuse evaluators/assessors regarding domestic violence in general and more specifically regarding the co-occurrence of domestic violence with substance abuse and/or mental health issues?

BATTERER'S BEHAVIOR AS IT SPECIFICALLY RELATES TO SUBSTANCE ABUSE, MENTAL HEALTH (HIS/HERS/CHILD'S)

David Mandel

Coercive control: substance abuse and mental health specific tactics

- Assaulting/abusing her because she uses or has mental health problems
- Blaming her use or mental health for his control/violence to others
- Blaming his substance use or mental health issues for his violence
- Controlling money to control her drug use
- Controlling money so he can use
- Controlling her access to medications and/or mental health providers
- Forcing her to use with him/making it safer for her to use with him than not using with him/abusing her when she doesn't use with him
- Emotional/psychological abuse related to her addiction/mental: "bad mother"
- Threatening to use her addiction/mental issues against her, e.g. call child welfare, tell family, tell children, call police
- Threats, attempts or actual use of child welfare and/or Family Court to take children away from her
- Using support from mental health and substance abuse providers to avoid responsibility for battering
- Using a denial of services ("I was told I don't need substance abuse treatment.") and or a failure to be diagnosed for a mental health disorder to gain advantages, such as visitation or custody of a child, closing of a child welfare case; dismissal of criminal court charges
- Attacking the relationship between her and her child -- "You're mother's sick." "Your mother is crazy."
- Interfering with child's mental/behavioral health treatment

- Preventing a child from taking prescribed psychotropic medication
- Lying about behavior/failing to take responsibility for abusive behavior in conversations with child's mental provider
- Targeting a child because of his or her mental health or emotional issues
- Scapegoating a child with identified mental health and/or substance abuse issues
- Without insurance coverage/payment for child's mental health and/or substance abuse needs

SOME THOUGHTS ON THE INTERSECTION OF SUBSTANCE ABUSE, MENTAL HEALTH AND DOMESTIC VIOLENCE

David Mandel

- Codependency is not a useful or accurate concept for describing domestic violence victims.
- For victims: “Denial” has different and similar functions when it relates to domestic violence versus substance abuse.
 - Different: avoiding new violence and abuse; protecting children; protecting from revictimization by others;
 - Similar: avoid feeling shame;
- A victim’s recovery or mental health is her responsibility. She is not responsible for her partner’s violence or cessation of violence.
- A domestic violence perpetrator’s substance abuse or mental health issues can be an aggravating factor to his abuse and control but is a separate issue. That said, his violence and abuse is unlikely to get better without his being in recovery and/or treatment.
- Inpatient/outpatient substance abuse and mental health programs often do not screen at all or well for domestic violence so their formulation of the case may be limited/lacking inclusion of issues of safety, e.g., she is an addict and domestic violence victim.
- If victim’s partner is in recovery or treatment he may remain abusive and controlling. Cessation of use does not guarantee a cessation of abuse. In fact, he may use his recovery as a justification for control e.g., “I need to go to my meetings, put my recovery in front of everything else.” “We need to save money etc. so I fix my mistakes.”
- A victim who is an addict or has mental health issues may be more vulnerable to a domestic violence perpetrator because of her addiction/diagnosis. She may:
 - Not be able to call police to protect herself from the violence
 - She may lack support from family and friends due to substance abuse or mental health related behavior, e.g., lying, stealing, unreliability

- May not be believed about abuse and violence because of her history of substance abuse or mental health issues
- Is perceived as a “less worthy” victim
- Self blame and the blame from others makes it less likely she will reach out around the violence
- May not be able to access traditional domestic violence services because she is actively using or has left/kicked out of a shelter due to her substance use or mental health
- He may attend the same twelve step meetings or be able to keep track of her through his friends in the meetings

Ethical Scenario 1

Judge Barry Sincere is a Family Court Judge in Hypothetical, Kentucky. Judge Sincere entered an Emergency Protective Order upon a proper petition by a mother on behalf of her child. During a domestic violence hearing, the mother of a child testifies that she witnessed the child's father on multiple occasions attack their eleven year old son leaving bruises and one time knocking the child out. When asked if she reported this matter to the Cabinet for Families and Children, Department of Community Based Services ("DCBS"), the mother replies, "No." Judge issues the Domestic Violence Order.

After the hearing, Judge Sincere calls DCBS and reports the incident to the intake worker. The intake worker provides the information to an investigator. Upon investigation, DCBS substantiates the abuse and also finds that mother failed to protect the child. The investigator goes to Judge Sincere and files an *ex parte* petition for the child to be removed. Judge Sincere grants the Emergency Custody Order and places the child into foster care. Within the statutory timeframes, Judge Sincere has a Temporary Removal Hearing. At this hearing, the Court finds just cause for the Petition and keeps the child in foster care pending an adjudication of the underlying case. Pursuant to Kentucky law, Judge Sincere appoints a guardian *ad litem* for each of the parents and the child.

Prior to the adjudication, the guardian *ad litem* for the mother files a motion for Judge Sincere to recuse based on *ex parte* communication with the Cabinet and that he was the referral source to the Cabinet. In addition, the motion alleges bias because the Judge also heard the DVO action. Should Judge Sincere recuse?

Ethical Scenario 2

Judge Cordial is handling a very high profile dependency, abuse and neglect case. The grandmother who raised the child has recently died, but before she died she placed the child with a fairly prominent family friend. The mother of the child has been in and out of rehab and prison. The father of the child has been fairly absent in the child's life. At the time of the DNA action, mother is not in rehab or prison and father is employed and has a home. The family friend, who has been in this child's life basically since birth, gets very nervous that she is going to lose this child.

The family friend goes to several churches and talks to prayer groups about the situation. She urges them to contact Judge Cordial and express their concern to the judge about the effects of moving this child from the only person he knows and placing the child with parents who have never been involved. The churches

jump on this endeavor. Judge Cordial's office receives about ten (10) phone calls and receives ninety-nine (99) letters urging Judge Cordial to grant custody to the family friend. The judge personally never reads any of the letters or takes any of the phone calls, but he knows that he received them.

Judge Cordial considers making a statement publicly and also considers recusing upon his own motion. What should Judge Cordial do?

Ethical Scenario 3

The social worker for the Cabinet for Health and Family Services has been working on a case where the child was neglected by her mother. Like many cases, the mother was angry with the Cabinet at the beginning for removing her child. Therefore, she did not actively participate in her treatment plan for the first seven (7) months after removal except for making her weekly visitation session with her child.

After seven (7) months, the mother finally began working her plan. Part of her treatment plan was for her to remain drug and alcohol free. At the nine (9) month mark after removal, the Court ordered a random drug test and the mother tested positive for use of marijuana. At that point, the Cabinet changed its treatment plan for the mother to go to a long term treatment center. The mother reluctantly went to the treatment center recommended by the Cabinet which was a six (6) month program. The mother successively completed the program.

As the mother was being released from the program, the Cabinet's attorney obtained a goal change order from the Court because the child had been in foster care for fifteen of the last twenty-two months. Under the Adoption and Safe Families Act (ASFA), the Cabinet felt it needed to find permanency for this child. Therefore, the goal was formally changed from reunification to termination of parental rights and adoption. However, since there was no waiver of reasonable efforts entered by the Court, the Cabinet continued to work a reunification plan with the mother concurrent with proceeding on its termination case.

Since that time, the mother has made significant progress. She has completed parenting classes. She has obtained her GED and is gainfully employed. She has stayed drug and alcohol free and has obtained a small, but adequate house. In addition, she is regularly attending AA/NA meetings and has obtained a sponsor.

The social worker is very pleased with the mother's progress and asks the independent review committee at the Cabinet for permission to begin actively reunifying the mother and the child. The Committee, during the review notes, that the child has now been in foster care for over twenty-two months, and denies the request.

The attorney for the Cabinet does not believe that the child should be reunited with the mother. Not only does he believe reunification would not be in the child's best interest, but he goes to church with the foster family and knows that they are willing to adopt this child. When the Cabinet's attorney reviews the report that the social worker wants to submit to the Court and the GALs, the Cabinet's attorney edits the report to remove much of the information showing the mother's progress since the goal was changed and removing the statement by the social worker that she believes that termination of parental rights at this point is not in the child's best interest. The edited report was ultimately approved by the social worker's supervisor and submitted to the Court and the GALs.

Prior to the termination hearing, the Cabinet's attorney meets with the social worker in regard to her testimony. The Cabinet's attorney informs the social worker that the social worker is required to present the opinion of the Committee as the position of the Cabinet. In addition, the Cabinet's attorney tells the social worker that if she testifies that she believes the mother's rights should not be terminated that the Cabinet's attorney will make sure that she is fired from her position.

At the hearing the social worker testifies that termination is in the child's best interest upon being asked this question by the Cabinet's attorney.

What are the applicable ethical rules to this situation?

Ethical Scenario 4

A seven year old was taken into foster care after a neighbor witnessed the child being spanked excessively by his father with a belt. The child had extreme bruising on his legs and buttocks area. The child's mother does not believe there is anything wrong with the punishment and refuses to cooperate with the Cabinet for Health and Family Services to protect the child.

The child is taken into foster care through an Emergency Court Order upon Petition by the Cabinet. The Court appoints Hon. Ima B. Leavher as the GAL for the child. Ms. Leavher shows up at the adjudication hearing and represents the child at the hearing. Ms. Leavher has not interviewed the child or any person in this case other than the social worker. Ms. Leavher makes the recommendation to the Court that the child remain in foster care. The Court adjudicates the child as abused and sets the case for disposition.

Prior to disposition, the social worker contacts Ms. Leavher to set up an appointment for the child to meet with her. Ms. Leavher states that she does not have time on her schedule to meet with the child in person prior to disposition, but gets the foster home's phone number to call the child. Ms. Leavher calls the child on the phone and talks to him for a short time. During the conversation, the child states that he wants to go back home to his mother. He also states that he

misses his father and that his birthday is next week and he wants to go to his grandmother's house on his birthday because she always cooks him his favorite meal on his birthday.

The child's birthday comes and goes without any contact from Ms. Leavher. At the disposition hearing, the Cabinet makes the recommendation that the child be committed to the Cabinet and remain in foster care with the parents to work a reunification plan. When asked by the Court if there was any dispositional alternative, Ms. Leavher simply says "No."

Has Ms. Leavher potentially violated any ethical standards?

Ethical Scenario 5

A seven year old was taken into foster care after a neighbor witnessed the child being spanked excessively by his father with a belt. The child had extreme bruising on his legs and buttocks area. The child's mother does not believe there is anything wrong with the punishment and refuses to cooperate with the Cabinet for Health and Family Services to protect the child.

The child is taken into foster care through an Emergency Court Order upon Petition by the Cabinet. While mother was offered a Guardian *ad litem*, she believes that any court appointed attorney is on the Cabinet's side and decides to hire her own attorney. She meets with Hon. S. O. Gullibal, a fairly prominent family attorney. Ms. Gullibal is sympathetic to the mother since the mother is not the abuser in this case. Ms. Gullibal believes that the Cabinet's decision to remove the child from the mother's care is extreme. Therefore, she decides to take the case.

Ms. Gullibal convinces the mother that prior to the adjudication hearing, the mother needs to complete the parenting classes recommended by the Cabinet, and she successfully finishes them. After beginning her representation, Ms. Gullibal starts interviewing witnesses and the social worker. During the representation, Ms. Gullibal learns that the mother has a significant history of mental illness and a long history with the Cabinet. In fact, Ms. Gullibal learns that the mother was responsible for the accidental death of another child several years ago. In addition, mother confides in Ms. Gullibal that she also uses corporal punishment on the child which leaves more bruises than what father's did and will continue to do so because "children need to be spanked." Moreover, Ms. Gullibal begins to get concerned about her ability to engage in a reasoned dialogue with her client because the mother frequently misses appointments and sometimes cannot keep on topic during their conversations. Frankly, Ms. Gullibal develops serious concerns about the mother's ability to care for her child and has the personal belief that the child is better off in his foster home.

What are Ms. Gullibal's ethical obligations?

Ethical Scenario 6

Assistant County Attorney Lynn C. Adams has been talking to a social worker at the local Cabinet for Health and Family Services about an ongoing investigation. The social worker has met with Ms. Adams on three (3) different occasions. During the first meeting, the social worker told Ms. Adams that the mother and father of the child was locking the child in the bedroom with no bed, no food, no toys and no opportunity to use the bathroom except on himself. During the next meeting with Ms. Adams the social worker states that the child did have food and toys in the room and that the parents had a video camera in the room to watch the child. In addition, while the child had accidents, the parents did take the child to use the restroom on a regular basis. During the final meeting with Ms. Adams, the social worker reverted back to the original situation that the child was locked in the bedroom with no bed, no food, no toys and no opportunity to use the bathroom. During this meeting, the social worker asked Ms. Adams to file a removal petition with the local family court. Question 1 -- What are Ms. Adams ethical duties in this situation?

At the removal hearing, the parents, without counsel, wanted to testify. They had not been advised any rights by the Judge. The parents began admitting to acts which could be deemed criminal. Question 2 -- What should Ms. Adams ethically do in this situation?

Prior to the adjudication hearing, the parents stop cooperating with the social worker which is very upsetting to the social worker. The social worker comes to Ms. Adams and begins telling her that she did not tell her everything that her investigation initially found. The social worker begins to tell Ms. Adams that there were feces all over the walls and floor in the room, that the room smelled of feces and ammonia to the point that it was a health hazard and that the children were drawing pictures with the feces on the wall of the room. Ms. Adams has severe doubts about this because there were no pictures of any of this. Ms. Adams states to the social worker that they have enough with what they have already presented, and therefore, they will just present the allegations already in the petition. The social worker tells Ms. Adams that if she is called to testify that she is going to tell the judge about these new revelations because "these parents never need these children in their care again." Question 3 -- What should Ms. Adams ethically do?

Finally, the Guardian *ad litem* for the mother reveals that this child is of Native American descent and registered with a tribe, that the child is bipolar and that the child should be placed with a grandmother in another state. Ms. Adams, who is a new Assistant County Attorney, does not understand what difference any of these statements to her makes. Question 4 -- Should she ethically be handling this case?

Ethical Scenario 7

Hon. J. Lyman Bailey, is an attorney appointed as a GAL to represent a sibling group comprising seven children ages three, four, five, six, eight, eleven, and twelve in a child dependency, neglect and abuse action. DCBS has recommended that the eight-, eleven-, and twelve-year-old children should be placed in long-term foster care or guardianship because they were unadoptable; that the four-, five-, and six-year-old children should be placed for adoption; and that the three-year-old should be placed separately in a placement that could care for the child's special needs. However, during the attorney's initial interviews with the children, he discovered the following information: (1) the three-year-old was very closely bonded with the eight-, eleven-, and twelve-year-old children and (2) many of the children in the three placement groups wanted to continue sibling association and visitation even after the termination of parental rights.

Can Hon. J. Lyman Bailey continue to represent all of the children in the dependency, neglect and abuse action? Can he represent any of the children?

Ethical Scenario 8

Hon. J. Lyman Bailey is again appointed as a GAL in a dependency, neglect and abuse action to represent three children, ages fourteen (sister), eleven (brother), and (sister) six. The petition alleges sexual abuse by the mother's boyfriend of the fourteen-year-old sister and that the eleven-year-old brother once saw the mother's boyfriend lying on top of his fourteen-year-old sister on the couch. During his interview of the eleven-year-old brother, the child informs the attorney that he wants his statements to remain confidential. The fourteen-year-old sister informs Mr. Bailey that she wants to be placed outside the home, but wants continuing contact with her siblings. The eleven- and six-year-old children want to remain in the home.

How does the GAL proceed?

Ethical Scenario 9

Because of his conscientious work, J. Lyman Bailey is again asked to serve as a GAL. He has been appointed to represent Jamie, a teenage mom, and her child. DCBS has filed dependency petitions on both baby and the teenage mother.

Can J. Lyman Bailey accept the appointment? What conflicts if any exist?

Ethical Scenario 10

J. Lyman Bailey, as part of his private practice, is currently representing a child in a delinquency matter. Since he is so familiar with the child, the court wants to

appoint him to be the GAL for this same child in a child protection proceeding while the delinquency matter is still open.

Can J. Lyman simultaneously represent the child in the delinquency and dependency action? Is this a problem for Family Courts in Kentucky?

**FAYETTE COUNTY KENTUCKY
GUARDIAN AD LITEM PROTOCOL FORM**

DATE

This form should be completed before the Disposition; and should be updated before each review; it is suggested that any updates be designated with bold type or italicized.

_____ Have reviewed GAL standards and best practices Guidelines developed by the American Bar Association, the NCJFCJ Resource Guidelines, and the Kentucky Best Practice Model for DNA Cases.

_____ Appointment Dated _____

_____ Appointment Received (date: _____)

_____ DNA-10 received

_____ DCBS face sheet received

_____ Family Team Meeting (date: _____)

_____ Attended Family Team Meeting (within 5 days of removal if child is in Cabinet custody; within 10 days of removal if child is in relative custody:

GAL comments from Family Team Meeting:

_____ Interviewed child (or saw child at home)

GAL comments from interview or observation of child; this should include:

Details from home visit:

Are there any language barriers? Are there any concerns about immigration status? How are these being addressed?

How many adults and children live in the home?

Siblings? Ages?

If there are siblings, are they in the same foster home?

If not, what are the arrangements for sibling visitation?
What are the sleeping arrangements?

How is the child cared for after school or while the adults work?

How is the home financially sustained?

Is there adequate food in the home?

Does the child have adequate clothing?

Are there any environmental concerns?

Are there any safety concerns?

Are there any other concerns about the home or persons in the home?

Conversations with caretakers

How does the child get to school?

Details on conversations with the child

From home visit prior to disposition

From in-person or telephone visit before each review

Investigation of the child's medical and therapy records

Report on visitation with the parents, including:

Parents' report and concerns, if any

Caretaker's report and concerns, if any

Cabinet report and concerns, if any

Details from a school visit, including:

Report card, attendance records, counseling records

Conversations with teachers, counselors regarding child's behavior

Any truancy issues?

How many high school credits does the child have?

Disability, special needs

Has the child been tested for disability, educational needs?

Does the child have a disability that adversely impacts her/his education?

Does the child receive special education and related services?

If so, does the child have an IEP (individualized education plan) currently?

Does the child have a Behavior Intervention Plan?

Does the child have a 504 plan?

Since these kids get moved around, it is important that any educational plan follows them. (Educational Passport is supposed to travel with the kid.)

Should the Children's Law Center or Legal Services be appointed to advocate for the child's educational needs?

Medical Issues:

Do you believe that this child would benefit from medical, dental, vision, or mental health care?

If so, please detail:

Court Attendance:

Does the child wish to attend court?

Will attending court upset the child?

Will attending court upset the child's routine?

Who will transport the child?

Should the hearing be postponed so child can be present?

If the child cannot be present, does the child want to write a letter to the Judge to express his or her wishes or to ask that the foster parents be present on his or her behalf?

Does the child need to visit the courtroom prior to court appearance? If so, will you or another professional be able to accommodate the child?

Yes, _____ will be transporting the child to see the courtroom.

Overall recommendations:

**PROPOSED NEW FAMILY COURT RULES OF PROCEDURE
AND PRACTICE (FCRPP)**

VI. Dependency, Neglect or Abuse.

FCRPP 16. Orders in Dependency Neglect or Abuse Actions.

The proposed new rule FCRPP 16 shall read:

To the extent not otherwise specified, any order entered in a dependency or neglect or abuse action shall be on the appropriate Administrative Office of the Courts forms approved by the Supreme Court.

FCRPP 17. Judicial Deference.

The proposed new rule FCRPP 17 shall read:

In making any determinations with regard to a child in a dependency or neglect or abuse action, the court may consider the findings of fact and court orders from any other court proceeding in any other court file involving the child or the child's parents or the person exercising custodial control or supervision, if the court is aware of such proceedings.

FCRPP 18. Service.

The proposed new rule FCRPP 18 shall read:

- (1)** A copy of the petition and summons, and an emergency custody order, if any, shall be served upon parents or persons exercising custodial control or supervision or who has been awarded legal custody by a court or claims a right to legal custody under the law of this state. It may be served by any person authorized to serve process except the state child protective service agency.
- (2)** A notice and statement of the rights and a blank affidavit of indigency, utilizing AOC-DNA-2.2, Notice of Emergency Removal, and AOC-DNA-11, Financial Statement, Affidavit of Indigence, Request for Counsel and Order, shall be served with the emergency custody order.

FCRPP 19. Emergency Custody Orders.

The proposed new rule FCRPP 19 shall read:

- (1)** Any request for an emergency custody order shall be in writing and shall be accompanied by an AOC-DNA-2.1, Affidavit for Emergency Custody Order, alleging dependency, or neglect or abuse, and shall be presented to the judge with any other documentation presented at the time of the filing of the request.
- (2)** Any interested party shall indicate on the affidavit whether there are other proceedings pending, or any orders of custody, related to the child in the commonwealth or any other state.
- (3)** The emergency custody order shall be on AOC-DNA-2, Emergency Custody Order. In no event shall a child be removed pursuant to KRS 620.060 only on a verbal order.

 - (a)** Upon entry of an emergency custody order by the judge, any interested party shall file the emergency custody order and the affidavit with the clerk no later than the close of the next working day, excluding weekends and holidays, and the clerk shall assign a case number.
 - (b)** If not filed with the emergency custody order, a petition shall be filed with the clerk within 72 hours of taking the child into custody in the same case file as the emergency custody order and affidavit.
 - (c)** The court may, after issuing an emergency custody order, transfer the case for forum non conveniens to the county where the dependency, abuse or neglect is alleged to have occurred and shall notify the court to which the case is being transferred, upon issuance of the transfer order.

FCRPP 20. Petition.

The proposed new rule FCRPP 20 shall read:

- (1)** A petition pursuant to KRS Chapter 620 shall be filed on AOC-DNA-1, Dependency Neglect or Abuse Petition. In proceedings involving siblings, separate petitions shall be filed for each child and individual case numbers shall be assigned by the clerk of the court, but all siblings' files shall be assigned to the same judge.

- (2)** When a petition is filed a copy shall be mailed or provided by the clerk to the parents or other person exercising custodial control or supervision, the state child protective service agency, the county attorney, the guardian *ad litem*, and any counsel of record, no later than the business day following the filing of the petition.

FCRPP 21. Notice of Temporary Removal Hearing.

The proposed new rule FCRPP 21 shall read:

- (1)** The clerk shall provide notification of the temporary removal hearing to the parents or other person exercising custodial control or supervision, county attorney, the state child protective service agency and the guardian *ad litem* and any counsel of record
- (2)** The order entered at the hearing shall be on AOC-DNA-3, Order Temporary Removal Hearing.

FCRPP 22. Orders from Hearings.

The proposed new rule FCRPP 22 shall read:

- (1)** Adjudication Hearing.
The order entered at the hearing shall be on AOC-DNA-4, Order Adjudication Hearing.
- (2)** Disposition Hearing.
The order entered at the hearing shall be on AOC-DNA-5, Order Disposition Hearing
- (3)** Permanency Hearing.
The order entered at the hearing shall be on AOC-DNA-6, Order Disposition Hearing.
- (4)** Permanent Custody Order.
Any order of permanent custody entered pursuant to KRS 620.027 shall be on AOC-DNA-9, Order Permanent Custody.

FCRPP 23. Continuances.

The proposed new rule FCRPP 23 shall read:

If the court grants an extension of time or a continuance it shall make written or oral findings on the record that the continuance is necessary in the best interest of the child, for accumulation or presentation of evidence

or witnesses, to protect the rights of a party, or for other good cause shown.

FCRPP 24. Dismissal.

The proposed new rule FCRPP 24 shall read:

Once filed, a petition shall be dismissed only upon court order.

FCRPP 25. Transfer.

The proposed new rule FCRPP 25 shall read:

Cases shall not be transferred from one county to another prior to adjudication except on a specific finding of improper venue or forum nonconviens.

FCRPP 26. Appearances.

The proposed new rule FCRPP 26 shall read:

Any attorney appearing on behalf of a party shall file a written entry of appearance. An attorney shall not withdraw from representation except upon motion to withdraw granted by the court.

FCRPP 27. Records and Transcripts.

The proposed new rule FCRPP 27 shall read:

- (1)** An electronic or stenographic record of interviews with children, including a recording of any in-chambers proceedings, shall be filed under seal with the clerk and may be made available to the parties or their counsel on motion and written order of the court.
- (2)** In courts that have more than one county in their jurisdiction any recordings made in a county other than where the action is filed shall be delivered to the clerk of the county where the action is filed by the court ordering the hearing.

FCRPP 28. Reports.

The proposed new rule FCRPP 28 shall read:

The court shall require delivery of a dispositional report three days prior to a dispositional hearing which shall contain the information listed on AOC-DNA-12, Dependency Neglect or Abuse Dispositional Report.

FCRPP 29. Case Plan.

The proposed new rule FCRPP 29 shall read:

The court shall require the out-of-home case plan to be filed in the record for any child in the court record.

(1) Visitation Agreements for Child.

The court shall require any visitation agreement set out in the state child protective agency case plan or the case permanency plan to be filed in the record and provided to all parties.

(2) Prevention Plan.

The court shall require any prevention plan established by the state child protective service agency to be filed in the record and provided to all parties.

FCRPP 30. Permanent Placement Review.

The proposed new rule FCRPP 30 shall read:

The court shall conduct a permanency progress review for a child who is under 16 years of age at the time that a petition for dependency or neglect or abuse is filed, not later than six months after the child is placed in foster care, in the home of a non-custodial parent, or other person or agency.

FCRPP 31. New Action.

The proposed new rule FCRPP 31 shall read:

Any new allegation or request for removal after a child has achieved permanency shall be filed as a new action.

VII. Adoption and Termination of Parental Rights.

FCRPP 32. Venue and Petition.

The proposed new rule FCRPP 32 shall read:

(1) Venue.

A proceeding under KRS Chapter 625 shall be filed in the same county, and shall be assigned to the same family court division, if any, which previously heard any action pursuant to KRS Chapter 620.

(2) Petition.

- (a) A separate petition shall be filed for each child and individual case numbers shall be assigned by the clerk of the court in proceedings filed pursuant to KRS Chapter 625, and in the case of siblings, shall be heard by the same judge.
- (b) Every petition in an adoption or termination of parental rights action shall include the case number of any underlying juvenile case, specifically dependency, neglect or abuse or termination of parental rights cases, and shall include the name of any guardian *ad litem* previously appointed.

FCRPP 33. Adoption.

The proposed new rule FCRPP 33 shall read:

- (1) No request for final hearing shall be made prior to the filing of the state child protective service agency report pursuant to KRS 199.510, and the guardian *ad litem* report, if any, pursuant to KRS 199.515.
- (2) In the event of an uncontested adoption, a hearing shall be held within 30 days of the filing of a request for a final hearing.
- (3) A continuance of any final hearing date shall not be granted except upon good cause shown.

FCRPP 34. Involuntary Termination.

The proposed new rule FCRPP 34 shall read:

- (1) Immediately upon the filing of any petition for involuntary termination of parental rights, the petitioner shall obtain a pretrial date. In the event the parents are not served prior to the pretrial date, the pretrial date shall be used as a case status review to expedite the proceeding.
- (2) A continuance of any final hearing date shall not be granted except upon good cause shown.

FCRPP 35. Orders Terminating Parental Rights.

The proposed new rule FCRPP 35 shall read:

The clerk of the court shall send two certified copies of the order terminating parental rights to the state child protective agency. The prospective adoptive parent or his or her attorney, if any, may obtain a certified copy of the order terminating parental rights from the state child protective agency to attach to the adoption petition.

FCRPP 36. Post-Termination of Parental Rights Review.

The proposed new rule FCRPP 36 shall read:

If an order terminating parental rights is entered, there shall be a review hearing conducted 90 days from the date of the entry of the order of termination of parental rights and at least annually thereafter for the purpose of reviewing progress toward finalization of placement or adoption for the child.

