



Child Law Practice

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Helping Lawyers Help Kids

ENGAGING FATHERS

Article #2 in a series

Representing Nonresident Fathers in Dependency Cases

by Andrew Cohen

You've just met your client, a nonresident father who has little or no relationship with the child who is the subject of the dependency case. He has not paid child support and has never visited the child. Will the judge and the child protective services (CPS) workers believe your client can play a meaningful role in the child's life? Will they ever trust that he can succeed as a custodial parent?

Unless the father receives services to learn to parent, he is likely to fail, especially given the complexities of parenting children with histories of abuse or neglect. As his lawyer, your advocacy is critical to help the court and agency see the father as a viable permanency resource for the child.

This article offers practical guidance to counsel for the nonresident father seeking custody of the child or some other custodial arrangement that would let him maintain an ongoing relationship with his child (e.g., kinship care with a paternal relative or open adoption). It assumes the nonresident father is not the "offending" parent in the dependency case, and that he has appeared in court and is working cooperatively with appointed counsel. (See *Locating Your Client*, p. 151.)

pate in the case—may be short-lived. Putative fathers may have only a small window of time in which to establish paternity; their right to participate in the dependency proceeding may also be severely curtailed until they establish paternity.¹ (See first article in this series, "Advocating for the Constitutional Rights of Nonresident Fathers," by Vivek Sankaran, Nov. 2008 *CLP*.)

Determine whether the client is, or ever was, married to the child's mother. Try to obtain a copy of the child's birth certificate.² In some jurisdictions, the father's name on the birth certificate may be sufficient to assure the client full parental rights or standing to participate in the proceeding. But if the client's name is not on the birth certificate, or his

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About this Series

The series gives attorneys and judges tools to better engage nonresident fathers in child welfare cases. Article topics include:

- ✓ Nonresident Fathers' Constitutional Rights (Nov. 08)
- ✓ **Representing Nonresident Fathers (this issue)**
- Working with Males/Male Help-Seeking Behavior
- Involving Nonresident Fathers: Tips for Judges
- Engaging Incarcerated Fathers
- Child Support Issues
- Ethical Considerations

Protecting the Client's Standing

At the earliest opportunity, you must determine the father's legal status regarding the child. In some jurisdictions, only "legal" fathers receive notice of dependency proceedings and are appointed counsel. In others, courts also appoint counsel for putative fathers identified by CPS on its dependency petition or by the mother. That appointment—and the client's standing to partici-

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ABA Child Law PRACTICE

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ABA Child Law Practice (CLP) provides lawyers, judges and other professionals current information to enhance their knowledge and skills, and improve the decisions they make on behalf of children and families. Topics include: abuse and neglect, adoption, foster care, termination of parental rights, juvenile justice, and tort actions involving children and families.

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presence alone is insufficient to protect the client's standing, you may need to help your client establish paternity in the dependency court (if it has jurisdiction) or in another court.

CPS may also challenge the father's standing, or right to contest the proceedings, based on abandonment, nonsupport of the child, or failure to establish a meaningful relationship with the child.³ Become familiar with the statutory and common law definitions of these terms. When the client's standing and right to participate are at issue, you'll need to work quickly with your client to show the court a history of contact with the child (or an explanation for lack of contact) and/or evidence of payment of formal child support or informal assistance.

Advocating for the Client's Goals

Communicate regularly with your client. Make sure you fully explain the nature of the dependency process and the risks and benefits of cooperating or fighting with CPS. Only after such full disclosure can the client make an informed decision about his goals.

Explain the potential "incidental" outcomes of the case. For example, the dependency court may have jurisdiction to order the client to pay child support to the child's custodian or the costs of foster care to the state. If the client is in the country illegally, he may be subject to seizure and eventual deportation if he appears at court. Similarly, he may be held on any outstanding criminal warrants if he appears. Such information may play an important part in the client's decision making.

The fully-informed nonresident father may want to seek custody of his child. He may want a relative or other person to care for or even adopt the child. He may want the mother to regain custody. Or he may

want visitation regardless of the dispositional outcome of the case.

Fighting for Custody

The first step when the nonresident father is seeking custody is to inform CPS of the client's goal. The social worker may not be familiar with the father or be aware of his interest. If the conduct of the mother leading to CPS intervention was egregious, or if she refuses to cooperate with services, the agency may focus on placing the child with the father. (For guidance when the father lives out of state, see *The Interstate Compact on the Placement of Children*, p. 152). Even if CPS is seeking to return the child to the mother or is seeking an alternative plan, constantly remind the agency of the father's interest and request that they consider a concurrent goal of custody by the father. CPS goals often change and courts often rule against parents who are perceived to have abandoned their efforts to work cooperatively with CPS.

Visitation

Whether or not CPS supports the father's goal of obtaining custody, the father must make every effort to maintain a relationship with the child through regular and frequent visitation. If the father had little contact with the child before court involvement, he may have to *create* a parenting relationship through visitation.

Getting Visits. CPS's obligation to provide "reasonable efforts" toward family reunification means, first and foremost, that it provide parent-child visitation. As a corollary to CPS's obligation to provide visits, the parent must attend them; that is, most courts view regular attendance at visitation as one of the most important indicators of the parent's commitment to the child. To the extent possible, the father should accept

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Surrender/Relinquishment of Parental Rights

If you represent a father who does not want any involvement with the child, explore the reasons why. If he believes he cannot afford to raise his child, discuss the availability of job training services, child support, and assistance from CPS or other state agencies. If he believes he would be a bad parent, explain that services are available to teach him how to care for his child. If the father still does not want anything to do with the child, discuss whether he is better served by:

- signing a “surrender” or some other form of voluntary relinquishment, or
- allowing the dependency case to proceed to an uncontested termination of parental rights.

In most circumstances, the first approach is best, even though the client will have to sign paperwork, perhaps before witnesses, and may have to go to court to be questioned by the judge. Signing a voluntary relinquishment is always faster and more certain than an uncontested

termination case. A dependency case may last for months or even years, and may not end in the termination of any parent’s rights if the child is returned to the original caretaker or placed with a relative. Further, a parent whose rights are terminated involuntarily to one child may lose the right to reunification services regarding other—and future—children.¹

Clients who wish to relinquish parental rights because they believe their child would be better off being adopted may be best served by actively participating in the case. The client may have strong views as to *who* should care for or adopt the child.

Fathers who sign surrender agreements or simply “disappear” from proceedings usually have no say in the placement or adoption of their children. Tell the father that, even if he has no desire to seek custody, he can participate in the proceeding to request a particular placement or adoptive resource. You may also be able to advocate for visitation or postadoption contact between the father and child if that is consistent with your client’s wishes.

Fathers who wish to relinquish

their rights to avoid child support present different challenges. States differ in their treatment of child support for parents who surrender their children voluntarily and those whose rights are involuntarily terminated.² Adoption usually ends ongoing support obligations, but it may not erase past obligations or the accrual of interest or penalties on arrearages. Know the governing law so you can explain all options to your client.³

Sources:

¹ See Pub. L. No. 105-89, § 101(a)(15)(D), amending 42 U.S.C. § 671(a)(15)(D).

² See, e.g., *Adoption of Marlene*, 822 N.E.2d 714 (Mass.2005) (voluntary surrender does not terminate child support obligations); *County of Ventura v. Gonzales*, 106 Cal. Rptr. 2d 461 (Ct. App. 2001) (order terminating parental rights also extinguishes child support obligation); *Kauffman v. Truett*, 771 A.2d 36 (Pa. Super. Ct. 2001); *Department of Human Resources v. Cowan*, 469 S.E.2d 384, 386 (Ga. Ct. App.1996) (order terminating parental rights extinguishes support obligation, but voluntary surrender does not).

³ For a discussion of voluntary terminations, see Welsh, The Hon. Martin P. “Strategies for Obtaining Voluntary Consents in Termination of Parental Rights Cases.” *ABA Child Law Practice* 21(2), April 2002, 17.

(Continued from page 146)

every visit offered to him. And he should attend each visit for its duration; he should not show up late or leave early. Explain to him that, if he is going to be late to a visit or miss it, he must call the CPS worker or foster parent immediately.

If CPS refuses to give the father visits, immediately seek court assistance. Speed is of the essence. Attachments can be lost if months go by with little or no visitation. During those months, the child forms attachments with other caretakers. The earlier and more assertively the client seeks visitation, the more likely CPS and the court are to act on his requests.

Getting to Visits. When CPS has custody of the child, parent-child visits are usually—at least at the beginning of the case—at the agency office or a supervised visitation center. Make sure your client can get to the visits. If the father does not drive or have a car, he must get a reliable ride or use public transportation. If transportation is unavailable to the CPS office or visitation center, press the social worker to hold visits in a more accessible location. If the worker balks at this, seek court assistance by filing a motion for visitation or other motion arguing that CPS is not providing reasonable efforts to reunify the family.

CPS often schedules visits only during weekday business hours. This

arrangement may conflict with your client’s work schedule. Explain to your client that attending visits is crucial. If your client cannot take time off from work, urge the social worker to hold visits after hours or on weekends. If the agency cannot accommodate your request, recommend having another agency or supervised visitation center with extended hours supervise the visits. Alternatively, propose having a friend or relative of the father supervise the visits. Again, if the worker is not willing to accommodate this request, seek redress in court.

Confirming visits. CPS often requires parents to call to confirm shortly before the visit or the visit

will be canceled. Urge your client to faithfully confirm. CPS usually has no obligation to “make up” a visit cancelled for failure to confirm.

Last-minute cancellations disappoint children and suggest to CPS and the court that the parent lacks commitment and is unreliable.

Of course, parents often miss visits for valid reasons, such as illness or family emergencies. Advise your client to contact the worker as soon as possible of the need to cancel. If a cancellation occurs, be sure to document the reason in case the matter arises later in court or in a CPS internal review.

Getting more visits. CPS may offer the father weekly visitation. Some agencies offer visitation only every other week or, worse, monthly. Visitation for incarcerated parents may be even less frequent. (A future article in this series will discuss visitation for incarcerated fathers). Needless to say, it is difficult to preserve attachments, and almost impossible to create them, on such a schedule. And frequent and regular visitation is particularly important for very young children.⁴

Advocate strenuously for more frequent parent-child visitation for the father seeking custody. Address this first with the social worker,⁵ who may agree to a plan with progressively more frequent visits depending on the father’s cooperation with services and attendance at visits. If the worker is not willing to provide more frequent visitation, consider appeals to supervisors and more senior CPS staff. Be sure to document these efforts in a letter to the agency from you or your client.

If efforts with CPS prove unavailing, seek help from the court. This requires familiarity with relevant legal standards for visitation requests. In some jurisdictions, judges can order CPS to provide whatever visitation they believe serves the child’s best interests.⁶ In others, courts may not be able to do

Locating Your Client: A Checklist

Even when a nonresident father does not formally appear in a case, courts in many jurisdictions will appoint counsel if the father is identified by the mother or by CPS in its complaint or petition. If you are appointed to represent a nonresident father, your first task may be to locate him.

Because you cannot take a position in court on behalf of a parent you have not met, make every effort to contact the father and learn his position quickly. The clock begins ticking toward permanency under the Adoption and Safe Families Act (ASFA) as soon as the child enters state care;¹ it does not wait until the father is located, served with notice, or appears.

The father’s address may be on CPS’s petition. If not, the mother, the CPS worker, or even the child may know his whereabouts. If these inquiries are unsuccessful, consider the following options:

- Send a letter to the last known address informing the client of the proceeding and instructing him to contact counsel immediately.
- Send letters to any of the client’s relatives (if such relatives are identified in the CPS file, or if the social worker, the mother, or even the child knows where they reside), asking them to have the father contact counsel immediately regarding the case.
- Leave a sealed letter at the father’s last known address with a separate cover note requesting that the landlord or current resident forward the letter to the father.
- Consult the phone book covering the area of the last known address.
- Consult Web sites that focus on addresses and phone numbers, such as whitepages.com, mamma.com or addresses.com.
- Consult the state Department of Revenue or other child support agency to determine if it has an address for the father on file.
- Contact the state Department of Corrections, or access inmate-locator Web sites, such as VINElink (www.vinelink.com), the Corrections Connection (www.corrections.com/links/show/20), the Pampered Prisoner (www.thepamperedprisoner.com/inmatesearch.htm), or the Federal Bureau of Prisons inmate locator service (www.bop.gov/iloc2/LocateInmate.jsp), to determine if the father is currently residing in a correctional facility.
- Retain the services of a private investigator to locate him, at court expense, if your state allows.

If all reasonable efforts to locate the client are unsuccessful, insist on service of process by publication or other notice that complies with state law. Wait for any “objection” or “appearance” deadline to expire. If the father still does not appear or contact you, the court is likely to strike your appearance. If it does not, you may wish to withdraw from the representation, or take no position in the proceeding but protect the client’s rights to the extent possible.

Source:

¹ The court must hold a “permanency hearing” within 12 months of a child entering foster care to decide the permanent plan for the child. *See* Pub. L. No. 105-89, § 302, amending 42 U.S.C. § 675(5)(C).

The Interstate Compact on the Placement of Children

Nonresident fathers living out of state face another barrier to reunification or placement with their children. Many jurisdictions interpret the Interstate Compact on the Placement of Children (ICPC) to apply to out-of-state nonresident parents.

The ICPC requires that the *receiving state* (state where the nonresident parent lives) conduct a home study of the out-of-state placement before the *sending state* (state hearing the dependency case) can place the child across state lines. Such home studies may take weeks, or even months, to complete. As a result, if a child is removed from a mother in New York City, a father in Hoboken, NJ may have to wait months to get his child, even though the parents live just a few miles apart and neither state's CPS alleges the father is unfit.

For a thorough discussion of the ICPC's impact on out-of-state parents, see:

- Sankaran, Vivek S. "Navigating the Interstate Compact on the Placement of Children: Advocacy Tips for Child Welfare Attorneys." *ABA Child Law Practice* 27(3), May 2008, 33.
- Sankaran, Vivek S. "Out of State and Out of Luck: The Treatment of Non-Custodial Parents under the Interstate Compact on the Placement of Children." *Yale Law & Policy Review* 25, Fall 2006, 63.
- Fiermonte, Cecilia. "Interstate Placements: Applying the ICPC." *ABA Child Law Practice* 21(5), July 2002, 65.

so unless the moving party proves CPS has abused its discretion or erred as a matter of law.⁷ Whatever the standard, judges may hesitate to "overrule" CPS's visitation decisions. Consider retaining an expert to help you prove the benefits of more frequent visitation. Offer your court affidavits, research or articles on the benefits of visitation to the extent permitted by your local practice and rules of evidence.⁸

Visits with the unwilling child. If the child does not want visits, or reacts poorly to them, your client may be perceived as selfish and uncaring if he pushes too hard for visitation. Even when the child wants to visit, the child may treat her father coldly, or shrink from him during visits, which may be very disappointing for your client. Still, the father must not give up; there may be many reasons for the child's feelings or reactions. Work to identify those reasons by asking the worker to explain to the father why the child may be reacting this way. In certain circum-

stances, it may help to seek permission to speak to or meet with the child's therapist and foster parents, to discuss these matters further. In certain circumstances, "therapeutic" visits—visits with the child's therapist or other counselor present to help the father respond to the child's needs—may be appropriate.

Press CPS to determine how the father can be introduced or reintroduced into the child's life positively. If CPS is not cooperative, notify the court, arguing that "reasonable efforts" requires the agency to determine how the father can visit the child to further family reunification efforts and serve the child's interests.

Services

Compliance with CPS's case plan is usually the best way to convince the agency to place the child with the nonresident father. Even if CPS has other plans, courts may still order such placement if the father has complied with a case plan. It is crucial, therefore, that CPS provide

the father a case plan with appropriate services.

Getting a case plan. Getting a case plan from CPS is easy if the agency is interested in placement with the father. If CPS has other goals, you may have to advocate for the worker to create a plan for the father. If the agency is still unwilling, ask the court to order CPS to create a plan.⁹ In the meantime, you may need to identify appropriate local services and help the client obtain them.

Getting the right services. Getting a case plan is not enough. The father must get the *right* services, participate in those services, and learn from them how to parent the child. CPS is often willing to negotiate case plans with parents. You can help the father negotiate the plan with his worker to secure the services he feels are most helpful to him. In addition to regular and frequent visitation, most fathers benefit from some form of parenting education. Even if the father has parenting experience, completing a parenting program will help him convince CPS and the court that he has the desire and skills to parent the child. If the child has special needs, the case plan should include services that teach the father how to parent a child with those needs.

Many fathers need assistance with job skills and finding employment. It is difficult for any parent to care for a child without regular income. Press the CPS worker to make all necessary referrals to agencies specializing in job training and placement.

If the plan requires the father to do too much, he is likely to fail. If it contains too few tasks—or the *wrong* tasks—he will not be able to parent the child even if he fully complies with services, and neither CPS nor the court will entrust him with the child. (See *Services Checklist*, p. 153.) Fathers may be more likely to succeed in classes and other

services that are father-specific and account for men's learning and interaction styles.¹⁰ (A future article in this series will address male help-seeking behavior.)

Child Support

Many nonresident fathers are subject to child support orders. Some have been paying; others have not. Many dependency courts have jurisdiction to enter and/or modify support orders. Inform your client that by appearing in the case he may be subject to such orders.

Paying child support allows fathers to show their commitment to the child. In many jurisdictions, failure to pay support is grounds to terminate parental rights. Paying off arrearages and making ongoing payments may be key to the father's bid for custody. (A future article in this series will address child support issues.)

Trial Tips

To permanently deprive a nonresident father of custody and/or terminate his parental rights, CPS must prove he is unfit.¹¹ Even if the agency has no evidence of unfitness or the evidence against the father is slim, CPS may still oppose the father's request for custody. While the burden of proof is on the state, certain dependency courts may hesitate to entrust a child to a parent who was not previously the child's caretaker—or, perhaps, *any* child's caretaker. Some judges may even hold stereotypical views of gender roles and hesitate to place a child with *any* father. You must therefore prepare for trial with an eye to "proving fitness."

It helps to conceive of this proof as having two components:

(1) *Physical capacity* looks to the mechanics of child care and is established by showing the client has:

- safe and appropriate housing for the child (such as an open room or an open bed, no lead paint if

Services Checklist

Counsel can serve nonresident fathers by becoming familiar with available services and providers, especially those within a short distance of the client's home or accessible by public transportation. Such services include:

- job training
- housing assistance
- parenting classes (both basic skills and skills specific to the needs of the child)
- help procuring state and/or federal benefits for the father and/or the child, including food stamps

Other fathers may need:

- substance abuse counseling, including Alcoholics Anonymous or Narcotics Anonymous
- mental health services, including counseling and psychiatric assistance
- anger management counseling
- batterer's treatment
- sex offender treatment
- referrals to low-cost or pro bono legal services for matters other than the dependency proceeding, such as housing or immigration

the child is young, working smoke detectors, and no "dangerous" persons in the home);

- sufficient financial resources to provide for the child (including savings, income and/or benefits);
- child care if the client works; and
- ready access (or transportation) to daycare or school and to services the parent and the child need going forward.

The best proof of the father's appropriate housing is often photographs of the home, the child's bedroom and, if the child is younger, the yard and neighborhood play spaces. The father's pay stubs and/or proof of benefits are helpful to show his financial ability to care for the child.¹² In preparing the father to testify, ensure he knows the names and locations of the child's day care, school, and service providers, and how he will ensure the child's access to them should the child be placed with him.

(2) *Parenting capacity* looks to the

client's understanding of, and ability to meet, the child's physical and emotional needs. The father's competent full- or part-time caretaking of other children may be the most compelling evidence. Other evidence of the father's parenting capacity can include showing that he:

- understands the child's needs;
- has been kind, nurturing and responsive to the child at visitation and/or before the case;
- successfully participated in CPS's case plan, including parenting services;
- is committed to the child (e.g., regularly attends visits, has provided ongoing child support); and
- has a "plan" for meeting the child's short- and long-term needs.

Using the client's providers as witnesses can help show that he has participated in and benefited from their programs or services. Obtaining expert assistance may also help

How Child Advocates Can Engage Fathers in Child Welfare Cases

- Encourage the court and child protective services agency to make ongoing, diligent attempts to locate a missing or unknown nonresident father.
- Request information from the father's counsel about his intentions regarding custody of the child or maintaining or establishing a relationship with the child.
- Ask the father's counsel about paternal relatives who may be interested in maintaining a relationship with the child.
- Ensure the child welfare agency is offering the father and his relatives meaningful services and resources to engage properly with the child.
- Request information from the child welfare agency about how visits between the child and father have gone.
- If appropriate, request information from the child about the father's or his relative's whereabouts and desire to establish or maintain a relationship with them.

prove the father has the skills and understanding to care for the child.

Third-party Custody

The father may not want to care for the child or may acknowledge he is unable to do so. Instead, he may want a relative (e.g., his parents) or a family friend to be a foster placement for, take custody of, or adopt the child.

Explore this option with your client early in the case. Children, especially younger ones, may attach quickly to foster parents. Agencies and courts may be reluctant to sever these attachments to place children with relatives, especially absent a strong, preexisting relationship. Make sure the agency is aware of the client's wish for a kinship placement as soon as possible, and urge the placement resource to contact the social worker and fill out all necessary paperwork.

State laws and procedures may permit bypassing the foster care system by proffering the relative as a custodian, guardian, or adoptive resource for the child. As the father's counsel, you may be permitted to file the guardianship or adoption pe-

tion or other legal paperwork on behalf of the resource, or you may be restricted to a more supporting role. In either case, counsel must show—or help the petitioning resource show—that the resource has the space and finances to care for the child and the capacity to meet the child's needs.¹³

Support of the Mother

If the father supports the mother's efforts to regain custody, work closely with the mother's counsel to devise a coherent, consistent strategy that presents the strongest case for the mother. You may wish to share witness examination, document review, and other trial preparation.

The mother's success at trial may depend on the father's promise of ongoing financial and child care support. Her success after trial may depend on his follow-through on those promises. Urge the father to maintain a positive relationship with the mother should she regain custody: Nonresident fathers who enjoy a good relationship with the mother tend to have greater contact and involvement with their children.¹⁴

Preserving Visitation Rights after Disposition

If the father is not seeking custody, he may wish to preserve visitation rights to the child following any dispositional order. If the child is returned to the mother, or if the custodian, guardian, or adoptive resource is the father's kin, the father may wish to address this issue informally. Discuss the possible fragility of such arrangements and the benefits of having a formal agreement or a court order for visitation.

The father may agree that the child should be adopted but want some contact with the child thereafter. Some jurisdictions allow courts to approve "open adoption" agreements or order postadoption contact.¹⁵ Such contact may include frequent visits or visits only once or twice each year; or it may be limited to exchanging cards and photographs. Determine whether an open adoption agreement is expressly authorized or otherwise enforceable in your jurisdiction. Also warn the father about potential problems enforcing the agreement if the adoptive resource moves out of the jurisdiction or refuses to comply with the terms of the agreement.¹⁶

Conclusion

Representing a nonresident father is more complex than representing a custodial parent. All parents' counsel must advocate zealously for their clients' wishes. But counsel for the nonresident father is often tasked with preserving the father's standing to participate in the proceeding, convincing CPS and the court to take the client seriously as a potential custodial resource, and helping create—not just preserve—a parent-child relationship.

For nonresident fathers, the child welfare system can be cold, unforgiving and filled with roadblocks. Without your zealous efforts, these clients may assume defeat and disappear from their

children's lives. Representing a non-resident father is difficult work, but with careful planning and aggressive advocacy, these fathers can play an important role—big or small—in their children's lives. This benefits the father, his children and society.

Andrew Cohen, JD, is director of appeals for the Massachusetts Committee for Public Counsel Services Children and Family Law Division. He serves on the steering committee for the National Parent's Counsel Organization, a project at the ABA Center on Children and the Law. He has represented parents and children in all stages of dependency proceedings for the past 15 years.

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Endnotes

¹ See, e.g., *M.V.S. v. M.D.*, 776 So. 2d 142, 148-50 (Ala. Civ. App. 1999) (failure of putative father to claim paternity under Ala. Code § 26-10C-1(f) results in irrevocable implied consent to adoption). See, generally, "Non-Resident Fathers, Paternal Kin and the Child Welfare System," National Quality Improvement Center on Non-Resident Fathers and the Child Welfare System, July 2007, 48, accessible at www.abanet.org/child/fathers/QICNRLiteratureReview.pdf (hereinafter, "Non-Resident Fathers"). If the client is the child's "legal" father, you generally need not be concerned with later challenges to the client's paternity. But even if the client is the "legal" father, if the client was not living with the mother at or near the time of the child's birth, you may wish to ask him if he has any cause to believe that there may be a paternity challenge from a putative father.

² CPS may have a copy of the child's birth certificate, especially if the family has been involved in the dependency process before. The mother (through her counsel) may be willing to give you a copy; if not, consider asking the court to order her to provide it.

³ See, e.g., Fla. Stat. § 63.062(2), § 63.064(1); W.Va. Code § 48-22-301(b)(2), § 48-22-306 (West 2007). In most jurisdictions, such

allegations are factors that the state may assert in proving parental unfitness, even if the state cannot assert them to challenge the nonresident father's standing.

⁴ See Smariga, Margaret. *Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know*. Washington, DC: ABA Center on Children and the Law & Zero to Three, July 2007, accessible at www.abanet.org/child/policy-brief2.pdf.

⁵ In some jurisdictions, counsel for parents and children cannot speak directly to CPS social workers without permission from agency counsel. Counsel must be aware of governing ethical rules and local practices when dealing with CPS social workers and supervisory personnel.

⁶ See, e.g., Cal. Welf. & Inst. Code § 362.1(a); *In re Nicholas B.*, 106 Cal. Rptr. 2d 465 (Ct. App. 2001); N.Y. Family Ct. Act § 1030.

⁷ See, e.g., *Care and Protection of Isaac*, 646 N.E.2d 1034, 1038-1039 (Mass.1995).

⁸ In certain circumstances, counsel may wish to seek the appointment of a guardian ad litem (GAL) to report to the court on the advisability of increased visitation between father and child. This carries risks. An independent GAL may not agree that increased visitation serves the best interests of the child, and counsel, by moving for appointment of the GAL, may have only served to create an important adverse witness. Retaining an expert in child development or psychology—with court funds where appropriate—is usually preferable, provided counsel has the choice whether or not to present that expert's findings to the court.

⁹ See, generally, "Non-Resident Fathers," *supra* note 1, 50. Many jurisdictions require CPS to provide services to nonresident fathers. See, e.g., *In re Shaiesho O.*, 887 A.2d 415 (Conn. App. 2006); *In re Asia Willis*, 2002 WL

31114983 (Ohio App. 3 Dist. 2002); *Robin V. v. The Superior Court of Orange County*, 39 Cal. Rptr. 2d 743 (Ct. App. 1995).

¹⁰ If the father has a history of abusing the mother or other women, direct him to programs designed to prevent further violence. For a discussion of services and strategies when working with batterers, see Goodmark, Leigh. "When a Parent is a Batterer: Understanding and Working with Abusive Fathers," *ABA Child Law Practice* 22(8), Oct. 2003, 121.

¹¹ See Sankaran, Vivek S. "Advocating for the Constitutional Rights of Nonresident Fathers." *ABA Child Law Practice* 27(9) November 2008, 129.

¹² Counsel must be familiar with the rules governing the admissibility of such evidence.

¹³ The resource may have his or her own counsel or may be unrepresented. Dealing with unrepresented parties—even friendly parties such as the nonresident father's kinship resource—presents many potential ethical traps. Counsel must be familiar with governing laws and rules for dealing with unrepresented parties.

¹⁴ See "How Do Social, Economic, and Cultural Factors Influence Father's Involvement with Their Children? A Summary of Key Research Findings." *Child Trends*, 1998a. September 29, 1998 <www.childtrends.org>.

¹⁵ See, e.g., Mass. Gen. L. ch. 210, §§ 6C-6E (authorizing open adoption agreements); *Adoption of Vito*, 728 N.E.2d 292 (Mass. 2000) (authorizing courts to order post-adoption contact between children and birth parents pursuant to their equitable powers).

¹⁶ See, e.g., Mass. Gen. L. ch. 210, § 6D (specifying that the only remedy for breach of an open adoption agreement is specific performance, and that the parties have no right to appointment of counsel in enforcement litigation).

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