

The Family Law Practitioner and CPS Cases

By Rene Sandler, Esquire

A family law practitioner must understand the policies and practices of Child Protective Services (hereinafter "CPS") in his or her local jurisdiction in order to assess and advise a client faced with a CPS inquiry or investigation. At an initial intake, it is important for a practitioner to obtain a detailed history from the client which should include a review of the client's own mental health history, substance abuse history, and abuse or neglect history. It is necessary to know whether CPS has ever been involved with the client's family. If a client requests that an attorney file a CPS report or contact CPS, the attorney should probe the motivation of the client for such action. Is there a good faith basis to make such a report or is the client attempting to use CPS as leverage or for an improper purpose? It is common for CPS to open up an investigation on both parents even when the initial report concerns one parent; an attorney should advise the client of this and bear this in mind during intake.

It is now commonplace for family law practitioners to have a case involving CPS in some fashion. Family practitioners must, at a minimum, be aware of the basics of how a CPS report is made and, ideally, possess an awareness of the mechanics of a CPS investigation. Clients involved in a CPS investigation in any capacity must be aware of their rights and be advised of those rights. Attorneys using the CPS process as leverage in a domestic case must be aware of the ethical issues surrounding this improper practice and the jeopardy in which such actions places a client and the client's children. Family law attorneys must understand the necessity of conducting a comprehensive intake of a client at the earliest stages of representation to probe for any likelihood that CPS could become involved. The practitioner must be skilled at identifying CPS related issues in order to best advise and protect the client's interests. Maryland law mandates that every health practitioner, educator, human service worker, or police officer, report suspected child abuse and neglect. The report does NOT require PROOF that abuse or neglect has occurred. Maryland Code FL §5-704 (b), requires the mandatory reporters to make such report to the local department of social services not later than 48 hours after the contact, examination, treatment or other circumstances that caused the individual to believe that the child had been subjected to abuse or neglect. These mandated reporters may be subject to professional sanctions for their failure to report. The law provides protection for persons who make "good faith" reports by providing immunity from civil liability and criminal penalty.

Maryland Code FL §5-706 mandates that, promptly after receiving a report of suspected child abuse or neglect, the local department must make a thorough investigation to protect the welfare of the child[ren]. The investigation must include a determination of the nature, extent and cause of

the neglect or abuse; a determination of the identity of the individual(s) responsible for the neglect or abuse; and the name, age and condition of every other child in the household, and any other pertinent information. The investigation and subsequent report must be completed within sixty (60) days of the initial reporting.

Family law has historically included divorce and custody cases; however family law has been expanded to include domestic violence cases and may be affected by Child in Need of Assistance ("CINA") cases which can be subsumed in a divorce or custody case. The incidence of domestic violence has shown a marked increase nationally and has created the need locally for special domestic violence criminal dockets with screening mechanisms in place to accommodate the volume of petitions filed seeking protection from domestic violence. Child abuse also has shown a steady national and local statistical increase since the year 2000. Published data shows that in the year 2007, there were approximately 3.2 million referrals of child abuse and neglect to respective States' CPS agencies involving, 5.8 million children. Of those 3.2 million referrals, 62% resulted in an investigation by CPS after the initial screening. With the rise in child abuse cases, the involvement of the Department of Social Services and CPS with families across the country has increased dramatically. Social workers have tremendous discretion to make decisions with little information in emotionally charged situations. The increase of cases and unfortunate publicity surrounding extreme cases of abuse or neglect has caused a microscopic analysis nationally of the CPS system, which in some instances, has revealed systemic abuses in that system.

CPS nationally is a system in crisis. There are widespread abuses in the system which varies from lack of training for social workers, too much discretion for social workers, large caseloads for social workers and lack of staffing for cases, lack of available resources for families, and in some cases negligence of social workers. Much has been reported about deaths of children stemming from social workers who failed to investigate cases of known abuse and neglect. Social workers in most cases are immune from liability; however Maryland recognizes liability for social workers in certain circumstances. In *Horridge, v. Doe*, 382 Md. 170 (2004), the Court of Appeals granted certiorari to review whether the public duty doctrine applied where DSS and individual social workers failed to investigate numerous reports of abuse which resulted in the death of a nineteen month boy. The court held that the public duty doctrine did not apply and upheld the case against DSS and individual social workers stating that it was at least arguable that the negligence of DSS and the social workers proximately

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caused the death of the child. *Horridge* makes clear the duty of DSS and its workers and that the agency and its workers are not immune from suit in certain circumstances.

States like California, Georgia, Texas, and New York have addressed widespread CPS abuses and have impaneled grand juries to review the system. In May, 2009, a Texas judge sentenced a former CPS worker to serve ninety (90) days in jail for false reports contained in a CPS investigation that she was conducting.

Also in May, 2009, a Grand Jury in the State of California reviewed the practices of CPS in that State after complaints, among other things, concerning the manner in which investigations of abuse and neglect were conducted. The Grand Jury found abuses in virtually all phases of the California CPS process, including how social workers conducted investigations, reporting procedures, and the collateral consequences a person faced if named as an "offender" in a CPS investigation. Sacramento, CA has conducted seven grand jury investigations since 1996 into

the systemic, persistent and repeated problems in the child welfare system of that state.

Social workers have tremendous discretion as how to handle their investigations. Personality conflicts with social workers and clients are a common occurrence due to the very nature of the pending matter and issues. Clients may be judged on impressions because proof of abuse or neglect is not necessary at the time social workers are making initial decisions in the case. Social workers may show up unannounced at child[ren's] schools often accompanied by a police officer to speak to the child[ren] and parents are rarely notified. Often the first time a parent hears about this school visit is when a child comes home and advises the parent of the visit.

There are many options available to a social worker in most CPS cases, of which one is the Safety Plan. A Safety Plan provides for certain rules for a client to follow in order for the client's children to remain in the home with the client.

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Mark Your Calendars...

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in mediation as an advocate or as the mediator without understanding this crucial subject.

Who Should Attend: Attorneys who represent clients in mediation (or plan to do so in the future), and mediators/ADR practitioners

How to Prepare For a Pendente Lite Hearing

Speakers: Honorable Joan Ryon, Montgomery County Family Division Master; Vincent Wills, Esq., Dragga, Hannon, Hessler & Wills, LLP & Stuart Skok, Esq., Houlon, Berman, Bergman, Finci, Levenstein & Skok, LLC.

Thursday, November 12, 2009
5:30 PM - 7:30 PM

Who Should Attend: This seminar is a must for newer family law practitioners who want to learn the nuts and bolts of requesting, preparing for and presenting an effective pendente lite hearing within the limited time constraints afforded by the Court. The more experienced family law practitioners will learn some tips and tricks to making their case.

What You Will Learn: Practitioners will learn the kinds of pendente lite relief available, the elements of proof, defenses, when immediate orders are entered, appropriate use of experts, the most valuable kind of evidence to present, the evidence that is irrelevant and a mock demonstration on effective argument,

direct, cross and objections.

Grandparent and Third Party Visitation after Barrett v. Ayres

Speaker: Judge Patrick L. Woodward, Court of Special Appeals
Thursday, October 22, 2009
7:45 AM - 8:45 AM

This program is designed for family law practitioners of all levels of experience. The program will focus on the recent opinion issued by the Court of Special Appeals in *Barrett v. Ayres*, 186 Md. App.1(2009), which addressed the impact of *Koshko v. Haining*, 398 Md. 404 (2007) on a pre-*Koshko* grandparent visitation order. The holding of *Barrett* will be discussed in depth, as well as issues left open by *Barrett* that practitioner's will likely encounter when litigating a motion to modify a pre-*Koshko* grandparent or third party visitation order.

SAVE THE DATE!!!

2010 Family Law University: "Family Practice in a Sour Economy"

Friday, January 15, 2010
Columbia Sheraton
10207 Wincopin Circle
Columbia, Maryland
8:45 a.m.—3:45 p.m.
Approved for 5.5 hours of CLE
More info to follow!!!

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A Safety Plan may include mental health treatment or other psychological evaluation of the client or substance abuse testing or treatment. The rules of the Safety Plan depend on the specific facts and type of harm alleged. To effectively negotiate a Safety Plan on behalf of the client, the attorney must know the client's history and be familiar with the client's educational, family, and medical history. It is essential that the attorney be prepared and appear knowledgeable about his or her client's history and not learn about the facts and circumstances for the first time while CPS is conducting its investigation. CPS investigations can spiral into CINA cases, criminal, or have significant impact on a family law case. CPS investigations trigger constitutional protections for a client so the attorney must identify whether a client's Fifth Amendment rights are triggered and/or due process rights that must be protected. An attorney must be able to spot issues and know when to involve other counsel to assist in the case.

Lawyers must be careful not to inadvertently become a witness for or against their client if a lawyer has communications with a social worker investigating a CPS case in which their client is a party or witness. Communication between an attorney and social worker is always documented and may be offered against a client, potentially compromising the attorney/client relationship; attorneys must be careful in this regard. Every time a social worker has telephone, email or other contact with a person in an investigation, the contact is documented and maintained in a contact note which becomes part of the investigative file. County Attorneys take the position that these contact notes are public records and as such are routinely admitted at trial in CINA cases.

It is unfortunate, but social workers may discourage those who are the subject of an investigation from consulting with an attorney. When an attorney appears with a client for a meeting with a social worker, the thought is sometimes that the person "must have done it" if he or she is accompanied by an attorney. CPS workers are often uncomfortable dealing with lawyers and if a lawyer who is not familiar with CPS takes the wrong approach in dealing with CPS, the attorney may do a client more harm than good. The practice of CPS is to have an attorney from the County Attorney's office present with a social worker if an attorney will attend the initial meeting of the client and social worker. An experienced CPS lawyer can help to clarify the issues, and present the case in a positive manner for the worker, thereby possibly minimizing the risk of the client's children being removed and placed into foster care. The attorney must make the proper inquiries of the client in an initial intake and know the policies and practices of their local CPS agency to best advise the client. An attorney who possesses this skill and

knowledge can provide important advice and guidance to a client at a time when a social worker may make a decision, often with little information, that will have a significant impact on the client and the client's children, perhaps for the rest of their lives.

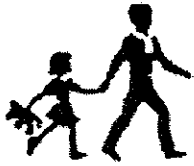
Many CPS cases involve questionable discipline of a child[ren]. In the case of improper discipline, a Safety Plan may be an option with required participation in parenting classes and counseling. Of course, it will depend also as to whether injuries were sustained by the child, and of what type, and whether there appears to be a long-standing pattern of improper physical discipline — for example the use of extension cords to administer spankings is abuse and may result in removal of the child.

Persons are required to execute medical releases for CPS which entitles the social worker to obtain any and all mental health and medical records for the client and children of the client. Social workers use preprinted form releases which an attorney should review and consider limiting in purpose, scope, and duration.

Family law practitioners should recognize that the family law model has now expanded to more regularly include other subject areas such as CPS. Family law attorneys should adjust their intake and practice procedures to accommodate the broader family law definition for cases and also educate themselves with continuing legal education classes or other learning devices. Practitioners should also recognize that areas such as CPS are specialty areas that will likely involve the assistance of counsel with specialized knowledge in the subject area which will ultimately benefit both the family law practitioner and client.

Rene Sandler, Esq., of Sandler Law LLC in Rockville, MD regularly handles CPS investigations and administrative appeals, protective orders, and criminal defense cases throughout the State of Maryland. Ms. Sandler has been recognized as an expert in these subject areas and teaches continuing education courses for attorneys on the topics of CPS, protective orders, drunk driving, and criminal law. Justin Lake, a senior at Penn State University, assisted Ms. Sandler on the research for this article.





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