Family Defense Center Files Federal Civil Rights Suit on Behalf of Domestic Violence Victim and Her Children

Case Exposes Illegal Policies and Practices of DCFS

By Diane Redleaf and Sara Gilloon, Co-Counsel in A.B. et al v. Holliman et al

Rochelle Vermeulen is a courageous survivor of domestic violence. She stood up to her abusive boyfriend in order to protect herself and her 15-month-old twins. Little did she know when she fled abuse with her children that she would face a miscarriage of justice at the hands of the Illinois child welfare system. Now, the Family Defense Center is seeking to redress the violation of the family’s civil rights. In addition to vindicating Rochelle’s and her children’s civil rights, the Center views the suit, A.B. et al v. Holliman et al, as a means to advance the constitutional rights of all mothers and children not to be separated without process or placed in harm’s way by DCFS.

Rochelle and the Twins’ Story. Rochelle had decided to end her relationship with her chil-
“A Decade of Justice for Families” Celebration Year Culminates in Center’s Ten Year Anniversary Party on October 7 at 5:30 at the Chicago Cultural Center.

Mark your calendars please! 2015 is the Family Defense Center’s Ten Year Anniversary, so the Center is gearing up for a special anniversary celebration at its annual benefit event. The Center was incorporated on June 7, 2005, and its first office opened on August 22, 2005. To culminate the celebration of our tenth anniversary, the Center has switched up its annual benefit to hold it in the middle of the week at the Chicago Cultural Center from 5:30-8:00 p.m. At the October 7 celebration, ten honorees will be recognized for their contribution to our Decade of Justice for Families Celebration. Honorees are as follows:

Brigitte (“B.B.”) Carlson, the Center’s first board president;
Mary Kelly Broderick, the Center’s second board president;
Michael O’Connor, the Center’s third board president;
Helene M. Snyder, the Center’s fourth and current board president;
Laurene Heybach, founding board member;
Elissa Efroymson, leading philanthropist and consultant to the Center;
Deborah Pergament, recurring board member and past-chair of resource development committee;
Suzanne Sellers, past board member, parent leader of “Know Your Writes Program” and frequent presenter on the Center’s behalf.

Mary Bird, Director of Public Service Programs at Loyola Law School and coordinator of numerous volunteers to the Center Mimi Laver, Director, Parent Representation Project, American Bar Association Center for Children and the Law.

Each of these honorees has been instrumental in our growth and success in the past 10 years.

In addition, our founder and Executive Director will receive the annual Family Defender award which is given to a person whose career has been dedicated to the cause of justice for families.

Co-chairs will be announced shortly.

2014 Is a Record Year for Pro Bono Service at the Family Defense Center; Pro Bono Attorneys and Young Professionals to Be Recognized at Holland and Knight Event

In 2008, the Family Defense Center started its pro bono program and that program has grown every year. By 2013, 61 attorneys had worked on cases in the preceding year and over $1.3 million in legal services had been donated by these attorneys to the benefit of Center clients. We thought that record would be hard to top, but in 2014, a record 87 attorneys from 15 different law firms and solo practices took cases through our award-winning program. Their work included work on four federal civil rights cases, three appellate court cases, an amicus brief in the United States Supreme Court (see article at p. 16), and a state court class action that was
Child Welfare Domestic Violence Reform in Illinois: The Road to a Presumption against Labelling Victims as Neglectful

By Sara Block*

In the Jenkins family, there are three children, ages four, six and nine. Melinda Jenkins imposed an unbreakable rule in the home: the children were forbidden to remove their shoes at home, even when they went to bed. By making the children keep their shoes on at all times, Melinda was preparing them to escape from home at a moment’s notice: the moment her boyfriend, Gary, became violent. Conceived carefully and practiced in much the same way schools practice fire drills, Melinda’s plan called for the children to run next door and alert the neighbors so they could call the police. The nine-year old, Daniel, was to make sure he took his younger siblings out of the house with him. That way, Melinda reasoned, the children would avoid becoming direct or indirect targets of the violence. They would be safe from harm. Every night after the children had gone to bed, and only after Gary had fallen harmlessly asleep, Melinda would go to the children’s room and remove their shoes.

Despite these and other efforts, Melinda continued to be abused. One night, Gary was beating Melinda. The children woke up from Gary’s shouts and Melinda’s pleas that he stop. With their shoes still on, Daniel gathered his siblings to leave the house to go to the neighbors. On their way past Gary and Melinda, Gary pushed Melinda and she fell into Daniel, causing him to fall to the ground. Gary grabbed Melinda again. Seeing that Daniel was physically unhurt, she instructed Daniel to go with his siblings to the neighbor’s home to call the police. When the police arrived, the children were across the street, and Melinda’s face had already begun to swell.

That night, Gary was arrested. The police also called the Illinois Department of Children and Family Services (DCFS). Following an investigation, DCFS personnel determined that Melinda was a neglectful mother because of the domestic violence she endured. Now, even though Melinda separated from Gary after he was arrested, and has ended their relationship as intimate partners, Melinda’s name was retained in the state’s register of people who abuse or neglect children, and as a result, Melinda lost her job as a pre-school aid.

Throughout the nation and in Illinois, mothers like Melinda and Rochelle (see p.1), who are victims of domestic violence, are often re-victimized when the child welfare system becomes involved in their families’ lives. These parents – referred to as non-offending parents – are often threatened with and subjected to removal of their children and placement of their children into foster care or with their batterer and/or his family. Non-offending parents are also at risk of being held legally responsible for the domestic violence against them by being deemed a “neglectful” parent. In Illinois, the neglect ground of “environment injurious” (Allegation #60) has been used in conjunction with the accusations that she “allowed the abuse,” “failed to protect,” or “did not leave.”

A finding of neglect based upon the “environment injurious” ground is counterproductive to helping the non-offending parent to find safety and stability for her family. Deeming a non-offending parent to be neglectful weakens, rather than strengthens the survivor’s ability to parent her children. Such intervention can have a negative impact on the children’s welfare. Holding the non-offending parent accountable for the domestic violence replicates the abuse she has already suffered by reinforcing the threats that the abuser likely used as part of the cycle of violence. Labeling the victim responsible for child neglect also sends the dangerous message to the abuser that the abuse is not solely his fault, and that his partner is blameworthy too, thus increasing the likelihood that the abuse will continue and escalate. The ineffective and threatening response of the child welfare agency also deters non-offending parents from reaching out to systems of support for help in the future. Quite significantly, as was the case for Melinda, the child welfare findings also limit non-offending parents’ employment options, making them more dependent upon an abusive, yet bread-winning partner.

DCFS’ response to families experiencing domestic violence contradicted the national model for child welfare intervention. The National Council of Juvenile and Family Court Judges’ created “Effective Interventions in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice” (commonly referred to as The Greenbook). The Greenbook has become the national model for child welfare intervention and its core tenets were adopted into the state’s law. The Greenbook model for intervention is based upon the sound social science research that when children are able to remain with the non-offending parent in safety and stability, the harms that children may have experienced by living in a home where domestic violence was occurring are significantly mitigated. Therefore, the
goals of child welfare intervention should be to hold the batterer solely accountable, presume that the non-offending parent is not neglectful, and ensure that children are able to remain with the non-offending parent in safety and stability. By achieving these goals, the focus of neglect investigation should be on the efforts – big and small – that non-offending parents take to keep their children safe and preserve their welfare.

The Road to Reform

In order to ensure that DCFS intervention does not continue to make it harder for non-offending parents to achieve “stability” by unjustifiably issuing neglect findings against them, the Family Defense Center has filed two major legal actions challenging the neglect ground of “environment injurious.” See the article “Victorious Settlement in Ashley M. v. DCFS” on page 1 for a discussion of Julie Q. and Ashley M., the lawsuits aimed at clarifying this broad, ambiguous and far reaching ground of neglect which has a disparate impact on mothers. Thanks to Julie Q. and Ashley M., 2012 legislative changes, and the new rule defining Allegation #60 in Illinois now provide that parents create an “environment injurious” for their children if they “blatantly disregard their parental responsibilities.” “Environment injurious” means that a child’s environment creates a “likelihood of harm” to the child’s health, physical well-being or welfare and that the likely harm to the child is the “result of a blatant disregard of parent or caretaker responsibilities.” “Blatant disregard” means an incident where the “real, significant and imminent risk of harm” would be so obvious to a reasonable parent or caretaker that it is unlikely that a reasonable parent or caretaker would have exposed the child to the danger without exercising “precautionary measures” to prevent the child from harm. Domestic violence can create a real, significant and imminent risk of moderate to severe harm, but not by itself. An incident of past or current domestic violence may qualify for an allegation of environment injurious “if the domestic violence creates a real, significant and imminent risk of moderate to severe harm to the child’s health, physical well-being, or welfare, and the parent or caregiver has failed to exercise reasonable precautionary measures to prevent or mitigate the risk of harm to the child.” Most importantly, the adult victim of domestic violence, who is the “non-offending parent or caregiver, is presumed to not be neglectful” or to have created an environment injurious to the child so long as he or she has “exercised precautionary measures to prevent or mitigate the real, significant and imminent risk of moderate to severe harm to the child.” [325 ILCS 5/3]. Additional terms of the Ashley M. settlement are also discussed in Victorious Settlement in Ashley M. v. DCFS (page 1).

Precautionary Measures

The presumption against a neglect finding for non-offending parents who are victims of domestic violence is critically important to efforts to protect domestic violence victims and their families from harmful DCFS intervention. This is the only presumption against a neglect finding in any of DCFS’ rules and regulations. This presumption acknowledges that the punitive neglect finding creates barriers to safety and stability for non-offending parents, and thus diminishes, rather than fosters, their children’s welfare. Non-offending parents are presumed non-neglectful so long as they took precautionary measures to prevent or mitigate the risk of harm to the children. Understanding what constituted precautionary measures, therefore, is central to the analysis of determining a non-offending parent’s responsibility for child neglect. DCFS has not yet enumerated examples or expanded the definition of precautionary measures, yet the Family Defense Center has developed a comprehensive list that the Center has asked DCFS to adopt into its procedures. Even if DCFS does not agree to adopt the Center’s proposal, the Center will be advocating in its cases to consider these examples as reasons not to find neglect.

The “precautionary measures” requirement takes into account the reality that the vast majority of non-offending parents take steps each and every day to reduce the impact on the children of living in a home where domestic violence is occurring can cause. Sometimes, these steps may not seem significant even to the non-offending parents themselves; these protective efforts may simply be the measures they see as their way of survival. It is important to look at precautionary measures that the non-offending parent takes throughout the history of domestic violence, including in the past, during the incident, and in response to the incident of domestic violence leading to child welfare involvement. Precautionary measures should not only consider the actions the non-offending parent has taken on behalf of her children. Also relevant are the quality of her parenting, adherence to parenting responsibilities, and the attachment between her and her children, as these qualities act as protective factors that reduce the harmful effects of domestic violence. The following lists highlight examples of “precautionary measures”:

Patricia Jones Blessman (one of the 2015 co-chairs) at the 2014 gala with Diane Redleaf, Simin Frazer and Sen. Carol Moseley Braun.
General Precautionary Measures Are Present When the Domestic Violence Victim:

- Attempts to stop the cause of the likelihood of harm
- Takes steps to protect child from the likelihood of harm
- Responds to any harm the child has experienced
- Reaches out to support system
- Utilizes social services to address needs in the family
- Possesses and utilizes parenting skills
- Maintains a healthy and loving relationship with the child
- Attends to the child's emotional, psychological, physical, educational and medical needs
- Considers the child's best interests.
- Makes decisions regarding the relationship with the perpetrator of abuse
- Discusses with the child a plan to maintain safety during an incident of domestic violence
- Develops a domestic violence safety plan individually or with the assistance of an advocate
- Physically defends herself/himself in attempt to stop the perpetrator of abuse from harming him/her or the child
- Acknowledges the potential impact that domestic violence can have on the child
- Utilizes a support system
- Attends individual therapy or domestic violence counseling
- Seeks guidance from religious leadership
- Calls the police
- Seeks legal assistance
- Obtains or attempts to obtain an Order of Protection or to initiate other legal proceedings;
- Ceases the relationship with the perpetrator of the domestic violence
- Restricts the access of the perpetrator of domestic violence to the non-offending parent/adult victim and child
- Makes decisions regarding the relationship in order to keep the children safe.

Specific Domestic Violence Precautionary Measures Are Present When the Victim:

- Uses knowledge about the abuser and the situation
- Uses safety strategies for herself/himself and the child
- Takes preventative measures to keep the child safe in case an incident of domestic violence occurs
- Attempts to keep the child safe from harm during an incident of domestic violence (ie moving to a room where the child is not; telling the child to leave the area where the domestic violence is occurring; instructing the child to seek outside help that the child can reasonably be expected to do; shielding the child from witnessing the domestic violence)
- Discusses with the child a plan to maintain safety during an incident of domestic violence
- Develops a domestic violence safety plan individually or with the assistance of an advocate
- Takes steps to protect child from the likelihood of harm
- Responds to any harm the child has experienced
- Reaches out to support system
- Utilizes social services to address needs in the family
- Possesses and utilizes parenting skills
- Maintains a healthy and loving relationship with the child
- Attends to the child's emotional, psychological, physical, educational and medical needs
- Considers the child's best interests.
- Makes decisions regarding the relationship with the perpetrator of abuse
- Discusses with the child a plan to maintain safety during an incident of domestic violence
- Develops a domestic violence safety plan individually or with the assistance of an advocate
Family Defense Center Prepares for 2015 Legislative Session with Two Major Bill Proposals to Limit Family Separations Under Safety Plans and Reduce Harm from Unfair Abuse or Neglect Labels

In the 2014’s legislative session, the Family Defense Center achieved four major successes: the Center secured passage of three pieces of legislation and we defeated an effort of the Cook County State’s Attorney that would have legislatively overturned the appellate victory in the Yohan K. case (which held that a constellation of injuries does not by itself constitute abuse). See Family Defender Issue 15. The first of the affirmative bills we drafted requires safety plans to be in writing and signed, stating the responsibilities of the parties. The second allows juvenile courts to appoint parents to be the educational advocates for their children even if DCFS has temporary custody. The third requires the differential response program to be implemented by July 1, 2016, a measure that grew out of a Center-proposed task force that made recommendations. (Differential response programs deflect cases from investigations and into services, but the Illinois program had been abruptly ended in 2012 due to budget cuts).

The Center is now gearing up for an ambitious 2015 session. The Family Defense Center plans to work with the legislature this year to secure passage of two proposals: the Child Abuse Registry Accuracy and Fairness Act of 2015 (CARAF) and the Family Protection Act of 2015 (FPA). Each bill’s provisions, if passed and implemented, could substantially improve the child welfare system for parents and families across Illinois.

CARAF has three main provisions which, together, would limit the impact of indicated abuse and neglect findings that are registered in the Illinois State Central Register, providing some relief to wrongly indicated persons, persons who have completed services, and persons who have been exonerated by courts of law. First, CARAF directs DCFS to create an option, for certain types of indicated findings, including those based on living conditions related to poverty, for findings to be maintained on the State Central Register for two years instead of the minimum of five years. For many of the most commonly indicated neglect cases, especially those related to poverty and resource issues, five years is too long a period for a person to be registered as a child neglector. An indicated finding can simply continue the cycle of poverty by blacklisting the affected parent or caregiver, preventing them from securing employment. The types of cases which would be included in the reduced time periods are: inadequate food, inadequate shelter, inadequate supervision, inadequate clothing, environmental neglect, and lockout. The Center’s proposal will allow these categories to be expanded by DCFS if it chooses to do so. In addition, the proposal allows that the currently applicable five-year period can be maintained if there are aggravated circumstances involved. One benefit from the legislation, if passed, is that it would reduce the number of DCFS indicated finding appeals that the system processes currently.

Second, CARAF directs DCFS to create a process by which indicated findings, if appealed, can be expunged if the parent or caretaker completes appropriate social services. This process would create an incentive for families to participate in services, such as substance abuse treatment, in order to correct issue DCFS considers to have caused the indicated finding. Currently, just because a family is indicated does not mean that they are offered any services. An indicated finding that is registered may do nothing to assist families to address the root causes for neglect or risk to children. Nor do families, once indicated, have any clear incentive to address the genuine risk factors that may impair their parenting; allowing them to have conditional expungement will provide an incentive to address these needs.

Third, CARAF directs DCFS to expunge any indicated finding where a court of law ruled a child was not abused or neglected or that the indicated person was not responsible for the alleged abuse or neglect. To secure expungement under this proposed law, the indicated finding must be based on the same set of facts, and the court must have determined that the responsibility, or the abuse or neglect, was not established by either a probable cause standard or a preponderance of the evidence standard. This provision would be
Family Defense Center Wins Second Appellate Victory in ‘Inadequate Supervision’ Case

On January 6, 2015, the Family Defense Center, in a case on which Winston & Strawn had assumed a lead counsel role, won its second “inadequate supervision” appellate court decision on behalf of Lisa F. As in the Center’s first appellate victory on behalf of Blanca V., the inadequate supervision allegation had been coupled with an “environment injurious” allegation that had been expunged due to the Julie Q. decision. In both cases, the appellate courts determined that DCFS had overreached in applying the “inadequate supervision” rule to the conduct of parents whose children were entirely unharmed, where the State had failed to show evidence of neglectful parenting. In Lisa F.’s case, while our client acknowledged use of the substance called K3, a.k.a. synthetic marijuana, at the time of the allegations against her (which was a lawful substance at the time), she insisted she never used the substance in the presence of her child. DCFS was unable to prove otherwise. As a result of this lack of evidence, the Appellate Court declared that:

“DCFS did not provide any evidentiary nexus between plaintiff’s use of K3 and whether such use resulted in a substantial state of stupor, unconsciousness, or irrationality so that it placed S.H. in a situation which would likely require judgment or actions greater than his level of maturity. Plaintiff's testimony that her use of K3 made her “high” and that it was “similar to marijuana” does not establish a basis to conclude that this use resulted in such a substantial state that plaintiff could not adequately supervise her son. DCFS never introduced any evidence on the chemical effects of K3 and whether it leads an individual to becoming unconscious, irrational, or in such a state of stupor so that the individual is unable to care for a child adequately.”

In other words, DCFS cannot assume that a parent’s use of a substance causes inadequate supervision; evidence of a connection to deficient care of the child is required.

The Center’s pro bono counsel will be asking the Appellate Court to publish the decision. Both the Blanca V. and the L.F. decisions are unpublished, preventing their citation as precedents for future decisions. Unfortunately, there are more cases on exactly this issue on the way to the Appellate Court, thanks to the representation our staff and pro bono attorneys are able to provide, and soon a precedent may be available that will help the Center prevent future cases.

Reduce Harm

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especially important for Illinois parents or caregivers who might be on the State Central Register blacklist for 20 or 50 years despite a juvenile court order in their favor. Without this legislation, there is currently no vehicle for an individual to get off the Register if the individual did not file or win an appeal filed within 60 days of notice of an indicated finding.

The second bill the Center is proposing this year, the Family Protection Act of 2015, is sponsored by Senator Julie Morrison. This bill builds on the success of Senator Morrison’s bill last year which required safety plans to be in writing, signed, and provided to those participating along with a rights and responsibilities explanation.

The bill proposes provisions that define a safety plan and bring the Children and Family Services Act and the Abused and Neglect ed Children Reporting Act into compliance with the constitutional requirements and the Seventh Circuit caselaw regarding safety plans and protective custody in Illinois.

In addition to updating the statutory standards, the Family Protection Act will require DCFS to track safety plan information internally. Currently, there is no standardized tracking system. As a result, Illinois lacks accurate reporting numbers as to the number of safety plans implemented each year or any information about what those plans require and how they affect families.

Under the proposal, a safety plan would only be an available option if the legal standard for protective custody is met. This means that there is an imminent danger to the child, there is no time for a court order, and there is objective reasonable evidence that a child is being abused or neglected. The bill will also ensure that protective custody and safety plans are not used if and when these requirements are no longer met.

The bill also requires that safety plans specify the exact limitations imposed on the parent or guardian, have limited duration and be reviewed every five business days, certify that a background check has been done on any caretakers or supervisors under the plan, and be the least restrictive option possible to maintain the safety of the child. These protections would have prevented a number of the Center’s most egregious cases of safety plans, including those that have lasted months despite the family’s protests and those safety plans where children were placed, over the parent’s objection, with an alleged kidnapper or a convicted felon.

The proposal requires that, when a safety plan is terminated, all individuals participating in the plan be notified of the termination and that DCFS make reasonable efforts to restore the child to the custodial parent’s case. In other words, unlike current practice, if DCFS puts a child with an adverse family member under a safety plan, they cannot bury their head in the sand and leave it up to the parent or guardian to figure out how to get their child back. The Center has handled a number of cases in which parents have had to get the police or the courts involved in order to undo what DCFS has done while the investigator has washed their hands completely after the termination of a safety plan. See p. 1 (lead story) for an egregious example of this concern.

Lastly, the proposal gives parents and guardians the clearer right to request that a safety plan be modified or terminated. It directs DCFS to set up a process in which the basis for, or conditions of, a safety plan is reviewed by a neutral decision-maker at the parent or guardian’s request. This basic due process requirement would give families and advocates alike an avenue to challenge unlawful and baseless safety plans. If passed into law, the protections outlined in the bill will create a better and fairer safety plan system in Illinois.

Please contact Angela Inzano (angela@familydefensecenter.net) if you are affected by any of these proposals or wish to take action in support of the Center’s legislative agenda this year.
FAMILY DEFENSE CENTER LAUNCHES LEGAL, POLICY AND EDUCATION PROJECT TO TACKLE MISPLACED ‘INADEQUATE SUPERVISION’ ALLEGATIONS

By Caitlin Fuller*

In several dozen cases involving Family Defense Center clients or potential clients, DCFS uses an overbroad standard to label parents, including parents who have done nothing wrong or who have experienced a one-time lapse in childcare, as guilty of “inadequate supervision.” Moreover, once DCFS becomes involved, the DCFS caseworkers do not respond to these same allegations in a way that addresses the lack of childcare, even where that need has been an obvious contributor to the allegations against the parent. The disconnect between the accusations against our clients and the lack of services to address the cause of the accusation our clients’ cases spurred the Family Defense Center to launch a new initiative, “End the Use of Unfair Inadequate Supervision Allegations Against Caring Families: A Legal, Policy, and Education Project.” This project aims to help the Center understand the dynamics and social factors involved in the decisions our clients make about leaving children unattended, to design an appropriate education program for parents struggling with these decisions and to work on policy changes that will better tailor child welfare intervention to cases in which children are genuinely left without minimally adequate supervision. All of these efforts are intended to enable the Center to expand and to support its advocacy for improved DCFS practices and better support for parents who are struggling to provide appropriate care for their children.

While lack of child care is not always behind the “inadequate supervision” label, a number of the clients facing “inadequate supervision” allegations have had genuine difficulties in providing consistent childcare, sometimes for reasons beyond their control. These clients do need help that would enable them to better care for these children. For example, FDC client Elizabeth M. was investigated and later indicated for inadequate supervision because, unbeknownst to Elizabeth, her 15-year-old daughter snuck out of the house with her own infant son in the middle of the night to go out with two friends. While at Denny’s around 4 a.m., the friends got into a fight. A breathalyzer showed that all three had been drinking. Elizabeth’s daughter was reported to DCFS for endangering Elizabeth’s grandson. When Elizabeth revealed to the DCFS investigator that she was concerned about the manner in which her daughter was caring for her own child (which was a matter beyond Elizabeth’s control), Elizabeth was shocked to discover that she herself was also being investigated as a result of the incident. Although she would have welcomed guidance on how to support her daughter to parent her grandson, she did not receive any counseling or services from DCFS caseworkers to help her in this regard.

Many different legal, political, and cultural rules and behaviors underlie the issue of inadequate supervision and the child welfare response it provokes. The frightening story of Niveen Ismail, which was brought to light in a 2013 New Yorker article by Rachel Aviv, entitled “Where is your Mother?,” encapsulates many of the issues at play in inadequate supervision cases. Niveen is a single immigrant mother, originally from Egypt, who worked in the computer field in California. The Orange County Social Services Agency, took her son, age three, following a single lapse in childcare because Niveen had gotten a job that she couldn’t afford to miss, but had no child care arranged. After a nine-month-long ordeal, Niveen’s parental rights were terminated even though her son was very well behaved and well cared for by her at the time the County agency intervened. The New Yorker article sheds light on the ways in which immigrant and ethnic minority mothers can be especially vulnerable to cultural biases within the child welfare system about what “good” parenting is.

Niveen’s story also reinforces the typical pattern in Illinois DCFS cases involving our own clients accused of inadequate supervision: that services, when offered, tend to be “one size fits all” rather than tailored to a family’s particular challenges and strengths. The child welfare system intervention involving Niveen and her son was focused around improving her style of interaction with her son via therapy supervised visits, on the misplaced assumption that her lapse in childcare was due to a personal or cultural inability to make good parenting decisions. In fact she simply had needed help with finding and paying for a qualified child care provider when she started work.

Extensive social science research has documented the difficulty that low-income working parents face in locating and paying for affordable and consistent childcare. The child welfare system has a history of treating poverty as a form of psycho-pathology that requires psychological reprogramming rather than assistance with concrete services. In the lawsuit that the Center’s Executive Director filed in 1989, Norman v. Johnson, DCFS’s failure to make reasonable efforts to prevent placement of children for reasons of poverty was challenged in federal court. During that litigation, the then-head of the Cook County DCFS Office was asked about the appropriate intervention to address the concern that James Norman (who was a laid-off steel worker with a serious heart condition) had no food in his refrigerator. She testified that, while it would be tempting to just buy him some groceries, the proper child welfare intervention would be a psychological assessment to determine the “etiology” of his apparent deficit in his parenting. In a similar vein, the DCFS response to lack of child care is often to treat a parent’s difficulty in accessing child care as a personal failing.

Like Niveen, our client Blanca V. was an immigrant mother struggling to care for her three small children while working. One morning, in a moment of desperation Blanca later sorely regretted, she left her 16-month-old child watching television in the care of her 8-year-old for 20 minutes while she took her third child to school. DCFS eventually indicated her for inadequate supervision, despite the fact that no harm came to the children and that this was a one-time lapse in childcare, as guilty of “inadequate supervision.”

For more information, see the Urban Institute’s 2012 report, “How Employment Constraints Affect Low-Income Families’ Child Care Decisions.”

* Caitlin Fuller is a second year graduate student at the University of Chicago School of Social Service Administration whose field placement project has included development of the “End the Use of Unfair Inadequate Supervision Allegations Against Caring Families: A Legal, Policy, and Education Project.”

The Family Defender
Misplaced Allegations

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time occurrence. Despite the allegation of inadequate supervision, the DCFS caseworkers working with Blanca never offered assistance in helping her plan backup childcare for emergencies. Instead, DCFS required her to attend support groups on topics unrelated to her childcare need. See Family Defender Issue #17, p. 4 (discussing Blanca V.’s case).

There is no social science evidence to support a conclusion that poor or immigrant parents are in fact more likely to leave their children unattended and unsafe than other parents. Research shows that the sole group of parents who appear to have a higher frequency of genuine safety challenges related to their child care practices are parents with mental illness. Yet even these parents are not helped by DCFS, as a general rule, when they are subject to a call concerning alleged neglect due to a lack of supervision. Because this population may be at the highest risk for an intervention by DCFS and most clearly needs assistance in addressing a genuine need, the Center has reached out to mental health providers, including Thresholds, to develop a joint policy position and advocacy plan to address the lack of an effective child welfare response to inadequate supervision allegations.

Inappropriately conducted DCFS investigations for inadequate supervision are not only unhelpful, but actually harm families and leave children less safe. FDC client Blanca V. told our staff that, after the drawn-out and traumatic investigation with DCFS, “I’m less likely now to ask for help when I need it.” Lisa E., who was also unfairly indicated for inadequate supervision, fought the indicated finding all the way to the Illinois Appellate Court (Second District), see p. 7, and won her appeal in an unpublished ruling dated January 6, 2015. In the meantime, she has lost opportunities to be involved in her son’s life, such as volunteering in his classroom and chaperoning field trips. Even though she won her appeal, damage had already been done: as she told us in an interview, “I will never get that time back. Never.” Even for the families who are able to find representation and appeal their indications, DCFS investigations exacerbate, rather than alleviate, the problems that may have spurred the investigation in the first place.

The DCFS guidelines for determining inadequate supervision do not reflect the complexity of families’ lives or the difficulty of judging as to when a child is in danger because of a lack of supervision. There are no hard-and-fast laws or policies regarding the age or length of time at which a child can be left without adult supervision. Instead, DCFS created a list of 21 factors that the investigator should take into account in evaluating whether supervision has been inadequate, including the frequency of being left alone and the maturity level of the child. However, DCFS investigators are not conducting full assessments based on these factors. Several Illinois court cases have confirmed that DCFS cannot indicate a case based on a single factor alone, such as the child’s age. While it is undoubtedly difficult to fully evaluate all 21 factors in the time frame that most DCFS investigators use, the shortcuts that agency workers take are harming Illinois families.

Just as the Family Defense Center was undertaking its third Appellate Court case involving inadequate supervision, see story p. 10 (featured in our February e-newsletter), the news went viral as to a Silver Spring Maryland family that was accused of neglect because they allowed their children, ages 10 and 6, to walk to the park. The Silver Spring case is almost identical in its facts to a Center case in

Family Defender Ellen Domph has provided outstanding advocacy for Center clients.

2008 involving two children who walked to the park in the Orthodox Jewish Community, where they were stopped by an alarmed bystander who didn’t think a 9-year-old should be going to the park at 6:00 p.m. with her 1-year-old sister. The Jewish community, however, responded strongly in support of the family, because there were neighbors all the way to the park who knew the children and would have been able to help them in the event of any emergency. The Center was able to prevail in that case before the circuit court judge, as it has prevailed in two of its appellate court cases to far, but only after the family went through a terrible ordeal and expensive court battle to clear their names from the neglect charge.

Clearly, the issue of blaming parents for “inadequate supervision” when parents make their own reasoned decisions about their children’s maturity is not unique to Illinois, California (as in Niveen’s case), or Maryland. By initiating the “End the Use of Unfair Inadequate Supervision Allegations Against Caring Families: A Legal, Policy, and Education Project,” the Center hopes to give more policy direction to not just the Illinois child welfare system but to systems nationally that may be responding with overkill to children being unattended, even when the children are fully capable of being independent.
Mother Files Appellate Court Challenge to DCFS Decision That Prevents Her Three Children from Playing Outside

Natasha F. did not expect that allowing her kids to enjoy a summer afternoon would lead to years of strife and an unfair child neglect label against her. On July 29, 2013, Natasha’s three boys were playing outside with their cousin. Natasha’s children were eleven, nine, and five years old, respectively, and their cousin was nine. The cousin’s mother is a close friend of Natasha’s, and the women were inside with a third friend, regularly checking on their children through the window. The four children were playing in a park, located in the lot adjacent to the apartment, and Natasha had left her oldest child in charge.

Natasha checked from her window that the children were fine every ten minutes. The children were doing well and were only outside for about half an hour. Natasha and her friends all approved of outdoor play as a way of releasing energy. But when a preschool teacher visited the park with her own class she assumed the children were completely unsupervised. Instead of simply asking the children to be careful, or asking them where their parents were, the preschool teacher left the park with her class and placed a Hotline call to DCFS, apparently unaware that caring adults were a moment away.

Natasha’s ordeal since that fateful call is not over. At each stage of the case, critical factual and legal errors have been made, according the Center and pro bono attorney Kathleen Barry of Winston & Strawn LLP, who is leading the appellate effort. DCFS decided to indicate Natasha and her friend for “inadequate supervision.” Natasha appealed that decision through DCFS’s administrative process, and at the hearing she received, the DCFS Administrative Law Judge rested the decision against her on the preschool teacher’s statement that she had seen one of Natasha’s children sliding the youngest boy under parked cars on a skateboard. But this report was contrary to the claims in the initial Hotline call, and Natasha testified it was entirely false: her two older children were playing on a scooter, which has a pole preventing it from fitting under parked cars, making it impossible to believe the teacher’s account.

The Administrative Law Judge also relied on the fact that Natasha’s two older boys have diagnoses of ADHD and were not taking medication for it at the time. The judge concluded that the eleven-year-old therefore should not have been trusted to watch out for the well-being of his younger siblings. But the Center contends that ADHD is one of the most commonly diagnosed medical conditions in children, and it does not prevent children from learning how to develop responsibility and forethought. Indeed, the DCFS investigator had agreed that the oldest boy, who had been left in charge, was mature enough to be trusted outside alone and acknowledged he was aware of safety rules to keep in mind when watching his brothers. Moreover, the boys had stopped taking some ADHD medicine during the summer at the doctor’s recommendation because the medicine caused medical complications and unpleasant side effects.

None of the four children experienced any harm in the half hour or so that they spent outside. Yet DCFS investigators concluded that the children were neglected due to Natasha’s “inadequate supervision.” For a parent to be indicated for inadequate supervision, a minor must have been left “without supervision for an unreasonable period of time without regard for the mental or physical health, safety, or welfare of the minor.” In this case, three children playing in a park for thirty minutes within eyesight of their home was deemed to be child neglect.

Pro bono attorney Kathleen Barry, who represented Natasha in the administrative proceeding, sought judicial review of the administrative decision in the circuit court. At the end of November, the circuit court judge affirmed the DCFS indicated finding, relying almost exclusively on the oldest child’s ADHD diagnosis.

Now the case is proceeding to the Illinois Appellate Court for the First District (Cook County).

Unfortunately, decisions like the one against Natasha are far too common and are used to limit parents’ ability to raise and support their children. Natasha was fired from a position in home health care and is unable to pursue her career of becoming a licensed practical nurse working with children while the unfair “inadequate supervision” finding remains on her record.

The Family Defense Center is making headway in changing the legal landscape for mothers like Natasha. However, on January 8, 2015, the Second District Appellate Court reversed another inadequate supervision finding. See p. 9. The Family Defense Center and its pro bono attorneys vow to continue pressing for court decisions that exonerate loving mothers like Natasha.
The Center’s New Litigation Support and Intake Staff Member Bryan Liberona Brings Rich Background of Client Service to Help Families

By Samantha Tarlton

Bryan Liberona began at Family Defense Center in October, 2014 joining the team in the position newly entitled “Litigation Support and Intake Staff Member.” Hailing from Philadelphia, Bryan attended the University of Wisconsin for his undergraduate studies with the intention of becoming a journalist. After earning his degree in journalism, Bryan moved back to Pennsylvania and attended Temple University’s James E. Beasley School of Law. He began working in the intake department at SeniorLAW Center in Philadelphia upon his graduation from law school in 2007.

Bryan moved to Chicago in 2011, working remotely for SeniorLAW Center. The following year, he began working as a collections attorney but wanted more meaningful work. He found fulfillment by volunteering with Coordinated Advice & Referral Programs for Legal Services (CARPLS). This volunteer work fortuitously led Bryan to FDC. His passion, education and experience make him a dynamic addition to the Family Defense Center.

The child of Chilean immigrants who came to the United States before Bryan was born, Bryan is bilingual. Bryan enjoys working with clients as well as with his fellow attorneys. He says that working at the Family Defense Center has been a “crash course” in a very interesting legal specialty, and that his colleagues are “incredibly helpful.” He’s excited to see how his role develops as he takes on increasing responsibilities, helping families navigate the complex child welfare system and remain intact.

The Family Defense Center’s New Administrator Samantha Tarlton

By Bryan Liberona

Samantha (“Sam”) Tarlton recently joined the Family Defense Center as our new office administrator. Sam grew up in Anderson, Indiana and graduated from Hanover College in 2012 with a degree in Sociology. Her college experience enabled her to travel, spending time in cities as varied as Portland, Oregon and Istanbul, Turkey.

Sam moved to Chicago after she graduated from college. She worked at Stepping Stones Nursery School and, most recently, completed an internship at Mindful Living Community Garden where she was responsible for website management, social media and event management.

Joining the Family Defense Center has enabled Sam to satisfy her passion for meaningful work that makes a positive impact on children and families. Sam is excited to work at an agency that not only helps individual children and families, but also works to change policies for the greater good.

**Family Defense Center Grows, Adding Staff with Diverse Backgrounds**

Thanks to increasing foundation grants, donor support, and a significant one-time fund award, the Family Defense Center will be able to add a Deputy Executive Director to its growing staff by the spring of 2015. In the meantime, two new staff, Bryan Liberona and Samantha Tarlton, joined our professional team this fall.

**Interns Add Enthusiasm and Ideas for Delivery of Service to Families:** Left to right: Ethan Shapiro (development intern), Nicole Setzell (law clerk), Jasmine Eshkar (winter term intern) and Caitlin Fuller (social work intern).
children’s father after he had become violent toward her. When Rochelle began to leave on August 11, 2014 with the children, the batterer attacked her and attempted to prevent her and the children from leaving. With police assistance, she was able to leave with the twins and found temporary residence with a relative. Meanwhile, the batterer’s family called DCFS against Rochelle. The next day, August 12, a DCFS investigator came to the relative’s home and saw that the children were fine and well-bonded with Rochelle. But the investigator, wrongly believing there was mold in the home, nevertheless told DCFS did not have probable cause to believe Rochelle was equally culpable in their mother, the DCFS investigator and the DCFS-assigned private lawyer by the Family Defense Center led to the final release of the twins to her care. Indeed, the last three days of Rochelle’s ordeal were particularly traumatic. The private agency workers who were keeping the children had to go to a domestic violence shelter. Rochelle she could not stay there, and insisted that Rochelle and the children had to go to a domestic violence shelter.

Rochelle agreed to comply with that demand, and the shelter told Rochelle that it could house her and the twins temporarily. But the DCFS investigator refused to wait for a consent form to be processed so that the shelter could confirm that there were beds available. The DCFS investigator next insisted that the child had to live with the batterers’ relatives, each of whom it is believed had a criminal record (despite Rochelle’s warning and pleas).

After weeks of pleading to end their separation, and with police assistance once again, on October 1, 2014, Rochelle was finally able to end the seven-week nightmare and secure the return of her children to her care. Indeed, the last three days of Rochelle’s ordeal were particularly traumatic. The private agency workers who were keeping the twins away from Rochelle decided that the batterer should be allowed to remain with the children, and they refused to help Rochelle get them back safely to her care. This decision allowed the batterer to abscend with the children. During that time, Rochelle did not even know where they were. Finally, a court order secured by Rochelle’s custody lawyers in Will County and simultaneous calls to DCFS lawyers by the Family Defense Center led to the final release of the children.

During the long period while the children remained separated from their mother, the DCFS investigator and the DCFS-assigned private child welfare agency insisted that Rochelle was equally culpable in causing DCFS’s intervention because she allegedly had “allowed” or “participated in” the domestic violence against her. DCFS and the private agency also repeatedly failed to intervene to ensure Rochelle was able to see her children during the separation period without being intimidated by her abuser.

The Center’s civil rights suit against DCFS and private agency workers responsible for separating Rochelle from her twins alleges that the threats made against her, the seizure of her twins, and their long separation were unconstitutional. Rochelle asks that the federal court enter orders that would provide compensation to her and her children for their ordeal. The suit also seeks punitive damages against the investigators who are alleged to have abusively threatened Rochelle, in violation of her fundamental rights as a parent. In November 2014, four attorneys from Latham & Watkins assumed a lead counsel role in the suit, which is pending in the Northern District of Illinois. Center attorneys Diane Redleaf and Sara Gilloon, along with the Center’s National Advocacy project attorney Carolyn Kubitschek, will continue as co-counsel. The DCFS defendants recently answered Rochelle’s complaint. The private agency defendants are asking to dismiss the suit. Briefing on that request is underway as this newsletter goes to print.

What is at Stake in the Lawsuit. Rochelle’s story illustrates a “perfect storm” of three sets of illegal policies and practices that deprived her and her twins of their constitutional rights to familial association: (1) the policy of threatening parents with separation from their children and coercing so-called safety plans in the absence of probable cause or an emergency, in violation of standards set by the 7th Circuit in the Center’s case *Hernandez v. Foster* (a suit led by Winston & Strawn attorneys); (2) the practice of taking children into quasi-foster care settings and treating the quasi-foster parents as if they had a lawful foster parent status, in violation of basic legal standards that apply to foster care placements under federal and state law; and (3) the practice of using the legally void DCFS Allegation #60 to treat a domestic violence victim as a child neglector.

Perfect Storm Condition #1: Coercive Safety Plan Policies and Practices. It has been settled law since the Seventh Circuit Court of Appeals decided *Doe v. Heck*, 327 F.3d 492 (7th Cir. 2003), that child protection investigators cannot gratuitously threaten parents with losing the custody of their children. To tell a parent that they may have their child taken from them, the State must first have reasonable objective evidence that the parent has abused or neglected their child. Without such evidence, a threat to the parent’s custodial rights violates the parent’s and the child’s fundamental liberty interests in familial association protected by the 14th Amendment to the United States Constitution.

In Rochelle’s case, DCFS did not have probable cause to believe Rochelle was endangering her children or had abused or neglected them. Nevertheless, DCFS coerced Rochelle into a safety plan under which she and her children had to live separately from each other, by threatening that her children would be taken into foster care and she would not be allowed to see them at all if she refused.

DCFS continues to label safety plans, even ones that are issued under terrifying threats like those issued to Rochelle, as “voluntary.” But calling such a safety plan agreement “voluntary” strains logic, common sense, and basic principles of law that define “voluntariness”. A mother, while in shock and in tears, told that she must sign a safety plan or surrender her kids to foster care, is hardly creating a “voluntary” living arrangement for her children. Indeed, courts have declared that threats against a parent as to her rights to see her children are among the most
Coercive threats possible, equivalent to the classic threat of a robber, “Your money or your life.”

The reason DCFS insists that safety plans like Rochelle’s are voluntary is that, absent voluntary assent, there is no legal authority that allows DCFS to require a parent and child to live separately from each other. The state may not lawfully deprive a parent of custody without compelling justification, and without providing a process by which the deprivation of custody is reviewed. Safety plans, labeled as voluntary even when they are clearly coerced, are misinterpreted as waivers of the constitutional right of families to live together. By falsely claiming that parents are voluntarily waiving their rights by entering into safety plans, the “voluntary” label also operates as DCFS’s excuse for failing to provide any procedure for parents to challenge the state’s action.

**Perfect Storm Condition #2: Operation of a Shadow Foster Care System With No Accountability.** Rochelle’s story also shines a light on DCFS’ operation of a shadow foster care system in Illinois—one that does not comply with the legal procedures and safeguards governing the actual formal foster care system. This system is one that rampant use of coerced safety plans brings about. When the State separates children without evidence and without affording a procedure for the parent to challenge its actions, as it does through the use of safety plans like the one it demanded of Rochelle, the result is a shadow system of “under the radar” foster care placements. Safety plans are not counted as foster care placements, and there is no formal system for any review of the State’s decisions to place children away from their legal custodians. If the children are living with people who do not have rights to care for them as established by court orders or established laws, the children living under safety plans live without legal oversight or legal protection to assure their safety and well-being. An untold number of children live under these state-imposed temporary safety plans away from their parents, because DCFS maintains no centralized count of safety plan placements. The resulting “shadow foster care system” permits children to be cared for by persons who do not have any qualifications to do so. It also prevents parents from ensuring the safety and well-being of their own children.

In this shadow foster care system, safety plans often have no end date in sight. Issues like who can consent to children’s medical care are swept under the rug. Individuals who have no right to secure children’s medical care without parental consent. A legal nightmare results, as it did in Rochelle’s case: individuals with criminal records—the abuser’s family members—were given carte blanche over Rochelle’s children. They were allowed to take Rochelle’s children for medical care by misrepresenting that they had legal custody of the children, which was false. Under safety plans, virtual stranglers actually told Rochelle in no uncertain terms that she was being coerced to live separately from her children. Despite the lack of a legal basis for separating her children from her, or any judicial imprimatur to justify removing the children from her, the similarities to the “real” foster care system were striking. DCFS and the private agency assigned to monitor the case created a set of “service plan” demands upon Rochelle that were identical to the demands created in actual foster care cases, where there is a comprehensive set of laws, rules and policies governing the conditions that parents must fulfill, there are standards foster parents must meet, and review processes that must be followed. And of course, in actual foster care cases, the reasons parents must follow these conditions is that a court of law had determined that there are sufficient grounds for taking the children from them and conditions the parents must meet to show they have corrected those grounds. No such lawful basis was ever shown in Rochelle’s case, yet DCFS and the private agency dictated conditions to Rochelle as if they were the judges in her case.

**Perfect Storm Condition #3: Reliance on a Void, Outdated Allegation of Harm That Stigmatizes Domestic Violence Victims.** A third policy and practice that violates Rochelle’s and the twins’ fundamental rights arose because DCFS continued to rely on an already-outdated and superseded policy that the Illinois Supreme Court had declared void, and which had already been replaced by a lawful policy that DCFS refused to apply. DCFS completely disregarded Rochelle’s status as a domestic violence victim, and violated her constitutional right to due process. The result is a shadow system of “under the radar” foster care placements. Safety plans, labeled as voluntary even when they are clearly coerced, are misinterpreted as waivers of the constitutional right of families to live together. By falsely claiming that parents are voluntarily waiving their rights by entering into safety plans, the “voluntary” label also operates as DCFS’s excuse for failing to provide any procedure for parents to challenge the state’s action.

Rochelle’s case is not the only case that the Center has handled in recent months that involves the three sets of practices that caused the violation of her family’s rights. But her case dramatically demonstrates all three unlawful practices occurring at one time (the “Perfect Storm”) and serving to reinforce each other. Rochelle regained custody of her children because she fought back, and because she had counsel willing and able to fight on several fronts. This is fortunate for her; however, many other families do not have access to the resources that were necessary to apply in Rochelle’s case. The Center hopes that by litigating this case fully, it will reinforce the constitutional principles upon which this suit rests, and future families will not have to endure similar violations of their fundamental rights.
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legation of “environment injurious.”

Basis for the Lawsuit

The class action complaint was filed by the Family Defense Center, along with co-counsel Michael T. Brody and Precious Jacobs from Jenner & Block, on September 3, 2013, because DCFS had refused to adopt a lawful version of Allegation #60 “environment injurious,” following the Illinois Supreme Court’s Julie Q. decision that held the Allegation #60 rule was void. See Issue 16 of The Family Defender for additional history of DCFS’s unlawful use of Allegation #60. The version of “environment injurious” in use at the time the lawsuit was filed, which DCFS had implemented in 2001, operated as a “catch-all” allegation. It was often the predicate for labeling parents and caretakers neglectful even when there was never an identified likelihood harm to a child and even when the basis for DCFS intervention—i.e., domestic violence, mental health, substance abuse—was more appropriate for supportive services than blame and declarations of parental neglect.

DCFS continued to use the 2001 version of Allegation #60 even after the Illinois legislature had enacted legislation in July 2012 that sets out stricter evidentiary standards for “environment injurious” (including requirements that DCFS find evidence of “likelihood of harm” and “blatant disregard”) and even after the Supreme Court had declared the 2001 allegation to be invalid in the Julie Q. opinion in March 2013. Indeed, the Ashley M. named plaintiffs’ cases included Allegation #60 neglect findings based upon: (1) a new mother’s disclosure of thoughts related to post-partum depression; (2) allegations being made by a psychologically troubled adolescent that did not establish neglect but did show the family was in need of services; (3) the parents’ decision to allow their adult daughter with a past substance abuse history to live in their home; and (4) an isolated dispute between two parents that briefly involved an unloaded gun, after which incident the parents immediately sought appropriate services on their own. None of these plaintiffs’ cases established a blatant disregard of their duty of care toward their children, as Illinois law has required since July 2012. Nevertheless, DCFS used the void allegation to indicate each of these named plaintiffs.

The claim for relief in the Ashley M. lawsuit was simple: DCFS’s failure to properly re-promulgate a regulation defining “environment injurious” violated the Illinois Administrative Procedures Act. The plaintiffs asked the court to enjoin DCFS from continuing to use the void 2001 version of Allegation #60, to expunge all indicated findings entered pursuant to that void version of Allegation #60, and to require the implementation of remedial measures, such as training, to eradicate all vestiges of the 2001 version of Allegation #60.

Developments Following the September 2013 Filing of the Ashley M. Complaint

After initial settlement discussions broke down, the parties briefed DCFS’s request to dismiss the case and the plaintiffs’ request to certify the plaintiff class. While this briefing was underway, on January 1, 2014, DCFS posted a new version of Allegation #60 pursuant to “emergency rulemaking” and, simultaneously, posted the same new version of Allegation #60 through the “regular rulemaking” process, which requires a series of notices and periods for comments before receiving final approval from the legislature’s Joint Commission on Administrative Rules.

When DCFS issued its “emergency rule,” it had not issued a single notice, memo, or policy guideline to its enormous staff alerting them of the substantive changes to Allegation #60 that the emergency rule proposed to implement. Indeed, at one of the Center’s DCFS hearings on June 11, 2014, a high-level DCFS Area Administrator testified in support of finding neglect under the outdated version of Allegation #60 and acknowledged that he was unaware of any changes to Allegation #60’s requirements in the past year.

The final version of the rule that went into effect on June 12, 2014, through the regular rulemaking process and had been subject to a comment period. It contained significant differences and improvements from the version that was posted as an “emergency” rule on January 1, 2014. Specifically, the permanent June 12, 2014, version includes an explicit protection for victims of domestic violence from unfair allegations of neglect, which is not present in the “emergency” version of the rule. See “Child Welfare Domestic Violence Reform in Illinois” by Sara Block at p. 3 for a detailed description of the rule changes as they pertain to victims of domestic violence.

Critical Pre-Trial Opinions by Circuit Court in Favor of Ashley M. Plaintiffs

While DCFS was promulgating a new version of Allegation #60 under the pressure of the lawsuit, briefing concluded and the Court held argument on the defendants’ motion to dismiss and the plaintiffs’ motion for class certification. On May 28, 2014, the Hon. David B. Atkins issued an opinion squarely and unequivocally denying Defendants’ dismissal request. Judge Atkins agreed in whole with the plaintiffs that when Allegation #60 was declared void ab initio, it was “as though Allegation 60 had never been passed” and, as such, if the Department intended to continue utilizing Allegation #60, it needed to re-promulgate the regulation in a lawful manner. In response to the DCFS’s claims that administrative regulations are presumed

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valid, Judge Atkins noted that “when the highest judicial body of the state determines that a regulation is void and lacking in statutory authority, that presumption cannot save an invalid regulation.”

On July 14, 2014, Judge Atkins issued another ruling in favor of the plaintiffs, this time granting plaintiffs’ motion for class certification. Following this ruling, settlement negotiations began in earnest, with the final terms of settlement being reached by the end of the 2014 calendar year. Notice of the settlement was posted on DCFS and the Center’s web sites.

What the Settlement Accomplishes

In accordance with Judge Atkins’ instruction in his May 28, 2014, opinion that “any investigation or indication under [the version of Allegation 60 the Supreme Court declared void] was in violation of the Procedure Act and outside of the scope of DCFS’s authority,” the parties agreed that DCFS will expunge any Allegation 60 indicated findings that were entered under that void Rule. This includes any indicated findings for Allegation #60 investigated between July 13, 2012 and before January 1, 2014, when the emergency rule was posted. DCFS will also expunge indicated findings that were entered during a “gap period” that occurred when the emergency rule expired on May 31, prior to the final enactment of the permanent rule on June 12, 2014.

Additionally, the settlement terms require DCFS to implement new investigation procedures that conform to the tenets and requirements of the new Allegation #60. Given that the procedures provide the nuts-and-bolts steps for how investigators are to approach specific investigations, updating the now-outdated procedures is critical to effectuating any true change in departmental culture and practices when it comes to claims of “environment injurious.” Finally, DCFS is to issue a memorandum to all employees and contractual service providers notifying them of the substantive changes to Allegation #60 and DCFS is to prepare and implement training for all DCFS investigative staff that explains the new version of Allegation #60 and its requirements.

The Work that Remains

The settlement of Ashley M. lays the groundwork for lasting change in the way the Department investigates claims of “environment injurious.” This work has been a centerpiece of the FDC’s overall agenda of tailoring the child protection system to children who have actually been harmed, or are at imminent risk of actual harm, due to gross parental misconduct, instead of policing areas of parenting where reasonable people could disagree and where children sustained no actual harm but for the intrusive intervention of DCFS into their family lives. But no single lawsuit, however successful it may be—including the very successful Ashley M. litigation—can turn back the clock on years of entrenched practices that have brought thousands of families into investigation the mammoth DCFS bureaucracy.

First, Judge Atkins’ rulings did not address the validity of the rule DCFS had posted through the “emergency” process on January 1, 2014. An agency is not permitted to bypass notice and comment requirements by declaring an “emergency” when no true emergency exists. The FDC is investigating potential further litigation based upon indicated findings that DCFS entered pursuant to the invalid emergency rule. Two such cases—Kaitlin’s and Esther’s—are discussed in the “Can You Believe It!” section found on p. 17 of this issue.

Moreover, DCFS continues not to apply the new permanent Allegation #60 rule that went into effect on June 12, 2014. DCFS’s most egregious failure is continuing to persecute victims of domestic violence despite the new Allegation #60’s directive that the non-offending adult victim is presumed to be not neglectful. Rochelle’s case, which is subject to a recent federal civil rights complaint filed by the Center and co-counsel at Latham & Watkins and which is discussed on p. 1 of this issue, is one such example.

Finally, as is discussed in the article “Family Defense Center Launches Legal, Policy and Education Project to Tackle Misplaced ‘Inadequate Supervision’ Allegations” at p. 8 of this issue, the allegation of “inadequate supervision” has become the latest frontier of continuing to label parents as “neglectful,” causing long-lasting harm to families without any evidence of actual harm or abuse or gross parental misconduct.

The Family Defense Center anticipates that at least 3,000 names will be expunged from the State Central Register following the Ashley M. settlement. New policies, procedures, and training will eliminate many future cases. The resolution and victories of the Ashley M. litigation—which never would have been possible without the dedication and expertise of Jenner & Block litigation attorneys Michael T. Brody and Precious Jacobs—provide an invaluable foundation upon which to build our future victories on behalf of families.

Family innocence advocate Michele Weidner recognizes one of her heroes, Prof. Deborah Tuerkheimer, 2014 Family Defense Scholar award winner.
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resolved on January 9, 2015 in favor of an estimated 6,000 individuals and thousands more who will benefit from new policies that the case requires. See article at p 1. With two appellate victories and two civil rights case settlements in 2014 and dozens of individual victories in administrative appeals, it was a banner year for pro bono service to Center clients. To help us make 2015 even better, contact Sara Gilloon at sara@familydefensecenter.net or 312-251-9800x25 to get involved.

Baker and McKenzie to Host Center’s Annual Mothers’ Defense Breakfast

Did you put down your calendar too soon? Another Family Defense Center event is around the corner: the annual Mothers’ Defense Breakfast. This year, we will focus on our work related to domestic violence and child welfare at a breakfast hosted by Lisa Parker Gates at Baker & McKenzie on May 7 from 8:00-9:30 a.m. A host committee is in formation and sponsorships are being sought. To join the committee or become a sponsor, contact Lisa Parker Gates at 312-861-8686 or Diane Redleaf at diane@familydefensecenter.net or 312-251-9800x11.

National Reunification Day to Continue Center’s Focus on Helping Parents to “Know Your Writes” (A Parent Advocacy/Writing Program)

Saturday, June 6, 2015 will mark the fifth annual National Reunification Day (NRD) program of the Family Defense Center. This event is held each June to celebrate families who have been reunited after child welfare involvement. The event celebrates the reunification of families against difficult odds and educates and empowers families to become advocates for themselves and their loved ones.

Last year, stemming from National Reunification Day, the Family Defense Center, with Suzanne Sellers at the helm, ran a “Know Your Writes” writing advocacy program for those parents who were interested in learning to tell their stories. The program was very successful in empowering, connecting, and educating parents on effective writing and oral advocacy skills. The Center hopes to involve those parents in future legislative advocacy through a variety of methods including, but not limited to, written or oral testimony and in-person meetings with legislators.

This year, the Center hopes to build on the momentum created after last year’s program and further empower more parents through another multi-session writing and advocacy program. Ideally, the program will grow into a strong parent advocacy network which would capitalize on the strengths and unique abilities of each parent to educate legislators about the ways in which the child welfare system affects families.

Planning committee representatives include staff from the Family Defense Center, Domestic Violence Legal Clinic, CLAIM, Children’s Research Triangle, Be Strong Families, and Legal Assistance Foundation. To get involved in planning for National Reunification Day, email or call Angela Inzano (angela@familydefensecenter.net).

Sidley and Austin Team Represents Family Advocates, With Center as Lead Friend of the Court, in United States Supreme Court Briefing

On January 14, 2015, the Family Defense Center filed its third friend of the court (or amicus) brief before the United States Supreme Court. This most recent brief was filed in support of the claims of criminal defendant (Darius Clark) who had been convicted of child abuse based on the hearsay statements of a three-year-old child. The Ohio Supreme Court had held that the conviction was unconstitutional because the admission of this hearsay testimony violated the Confrontation Clause of the Sixth Amendment. Ohio sought review. With the help of five lawyers at Sidley and Austin (Tacy Flint, Steven Horowitz, Teresa Reuter, Nick Tyggeson and Rachel Goldberg), the Family Defense Center became the lead organization in an amicus brief joined by two university legal clinics, two other family advocacy organizations and a clinical law professor. The Center’s “family advocates” brief supports the position that admitting the 3-year old child’s hearsay statements in the criminal trial violated the Confrontation Clause.

The Center generally does not handle criminal cases, but the issue of whether hearsay statements of very young children can be admitted at a high-stakes criminal case, without affording the defendant any opportunity to confront the person making the accusation, has significant potential consequences for family defense in a non-criminal context. The Center has considerable experience and expertise in understanding how young children’s statements can be unreliable, may be misunderstood, and can be unfairly used against innocent persons. Given this experience and the well-grounded concerns, it seemed to be of potential value to the Supreme Court’s deliberations to include a brief that discussed the issue of unreliability of young children’s statements in the context of the evolving Confrontation Clause questions the Court is considering.

While not directly applicable to Center’s child welfare cases, a holding by the Supreme Court that the Confrontation Clause was violated could assist in Center cases indirectly, while a holding that the Confrontation Clause is not violated could open the door to even more problematic investigations that rest on unreliable third-party testimony about what very young children have reported.

Jeffrey Fisher of Stanford Law School’s Supreme Court Clinic, who represented the Center’s clients in its petition to the Supreme Court in Dubay v. Samuels, will be arguing on behalf of Mr. Clark on March 2, 2015. The Center is very grateful to Sidley & Austin for agreeing to represent our views on an important issue before the Supreme Court. The excellent brief prepared on our behalf is posted on the Center’s web site, and all of the briefs in the case can be read on SCOTUS blog (look for the list of “merits” cases and Ohio v. Clark).
Welcome to the topsy-turvy world of domestic violence and child welfare.

**Sasha** had recently separated from her physically abusive husband and obtained an order of protection against him. She and their four young children moved in with some of Sasha's relatives, including with her own two younger teenage siblings. After Sasha had left, her husband was arrested for violating the terms of the order of protection. He retaliated by calling DCFS and made false allegations that Sasha's two siblings were abusing the children. DCFS showed up at the home, immediately removed the children under a purported "safety plan" that Sasha never even saw and certainly did not sign. DCFS turned the children over to their father (Sasha's husband), and ordered that Sasha only be allowed supervised visitation. Sasha was not under investigation and the husband was a domestic violence perpetrator who had just been arrested for violating an order of protection. After several weeks, DCFS "ended" the safety plan and also later unfounded the allegations against Sasha's siblings. Having won a victory by manipulating the system, Sasha's husband then refused to return the children to her and claimed that he now had custody, leaving Sasha to fight it out in custody court to even secure visitation. Even after we represented Rochelle Vermeulen (article p. 1), we still can't believe it when DCFS removes children from the care of their mother (a domestic violence victim who, unlike Rochelle, was not even under any investigation), hands them over to her batterer, and then buries its head in the sand (claiming they do not get involved in custody determinations) when the allegations turn out to be baseless and the batterer refuses to return the children.

One night, Alicia's alcoholic husband came home drunk, beat her, and also physically abused their two young children. He hit their son in the back with a broomstick and banged his head against the wall. He grabbed their daughter by the hair and threw her into the wall. He smashed her in the face, and began choking her with both hands. As soon as he let her go, Esther contacted the police. The husband subsequently entered a plea of guilty to Domestic Battery. DCFS, however, declared Esther to be equally culpable as her attacker in causing "neglect" to the children and indicated her for Allegation #60 "environment injurious," effectively blaming Esther for the violence that had been perpetrated against her. See the feature articles on pages 1 and 3 for background on FDC litigation against unjust applications of Allegation #60 and the current presumption that victims of domestic violence are *not* neglectful. Attorneys with Jenner & Block, including FDC board member and recent recipient of the FDC's Pro Bono Service Award Louis Fogel, are now representing Esther. Although the DCFS attorney recommended that DCFS voluntarily unfound the allegation, especially because DCFS used the arguably invalid version of Allegation #60 posted under "emergency" rulemaking procedures, DCFS's investigative staff has insisted that indicating Esther was the right thing to do and are refusing to back down as of the date on which this newsletter is being published. Louis Fogel and Jenner attorney Rachel Bell will be prepared to litigate this question at an upcoming DCFS hearing.

As it did with Esther, DCFS also used the invalid "emergency" version of Allegation #60 "environment injurious" to indicate a finding of neglect against our client, **Kaitlin** -- with the now-familiar sole basis being that she had been the victim of a domestic violence incident. Kaitlin, her husband, and her seven-year-old son were in the bedroom when her husband, who has a military combat-related diagnosis of post-traumatic stress disorder, suddenly attacked Kaitlin. Kaitlin defended herself and then immediately left the home with her son and her baby daughter, who had been napping in the living room. Despite Kaitlin, the son, and the husband himself all consistently reporting to DCFS that the husband attacked Kaitlin, DCFS labeled the "fight" as "mutual." Without making any determination as to how Kaitlin's conduct could be considered "blatant disregard" (a statutory requirement in order to indicate a finding of "environment injurious"), the DCFS investigator and her supervisor formulated their own legal standard and applied a per se theory of strict liability; concluding that since both parents admitted that the incident happened, both parents would be indicated. Pro bono attorneys Terri Reuter and Erin Rigney from Sidley & Austin represented Kaitlin at a DCFS hearing on December 18. The Center hopes that, in this case as with others like it, the Administrative Law Judge will hold the DCFS investigators to actual legal standards for indicating a finding of neglect based on an "environment injurious."
We counted the numbers: 94 people have worked at the Family Defense Center since we opened in our office on August 22, 2005. At a recent staff meeting, we filled every desk around the conference table with our eight permanent staff and four interns who were in the office that day. Our pro bono program hit record participation levels for the third year in a row, with 87 attorneys working with us in 2014. Our budget has grown almost every year too, despite the recessionary times we have faced. Skepticism about our mission and the worthiness of our clients has given way to a much broader appreciation of the plight of many families in the child welfare system. We’ve spurred networks of people who share with us a desire to fix the child welfare system. We have become leaders in a growing national movement too.

It helps that we win most of our cases, and that we are very careful and strategic about what we do. It helps that we have top legal talent in Chicago and the nation helping our clients in the cases and projects we work on. It helps that we now have a thriving national network of attorneys in our field, led by one of our 2015 Ten Year Anniversary honorees, Mimi Laver, to look to for guidance, connections, and support. It helps that in 2014 we had over 554 supporters who donated funds to help us protect children by defending families.

The Family Defense Center’s growth in 2015 is being marked by our addition of a Deputy Executive Director, to be hired shortly after this newsletter goes to print. This development shows we really have grown up—from a single attorney working 20% time in 2005 (that was me!), to an office that has a new depth of leadership to manage our budget, shepherd our resource development and work with our board and committees.

We are not an organization that rests on its achievements though. This year, while we celebrate where we have come in the past ten years, we’re also challenged to do more in the next decade than we’ve been able to do so far. Despite impressive growth, our field is still in its infancy. Families’ rights in the face of accusations are ignored in increasingly high-profile cases that demonstrate the need for child welfare system accountability and due process of law. Our movement for justice for families in the child welfare system still has no voices in most state capitols and no lobbyists in Congress. But we are getting there, growing stronger each year.

With your help, we’ll have another decade of success to report in 2025.

Yours in the struggle for justice,

Diane L. Redleaf
Founder and Executive Director,
Family Defense Center