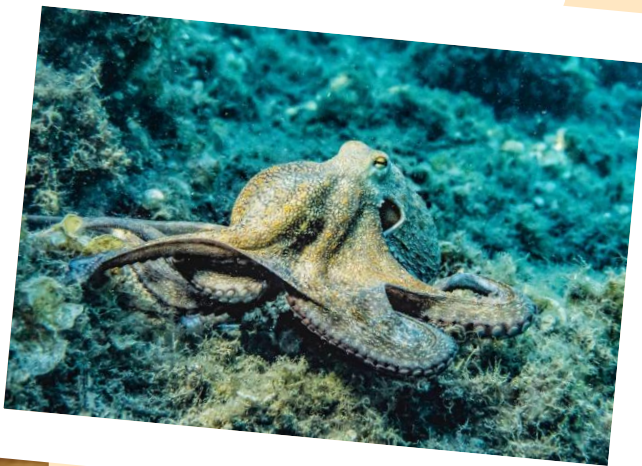


2025

# Myth

# Busters

Year In Review



CAFL Legal Response Team

# AGENDA

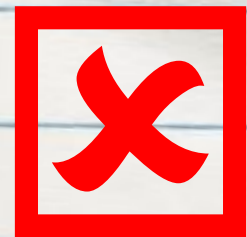
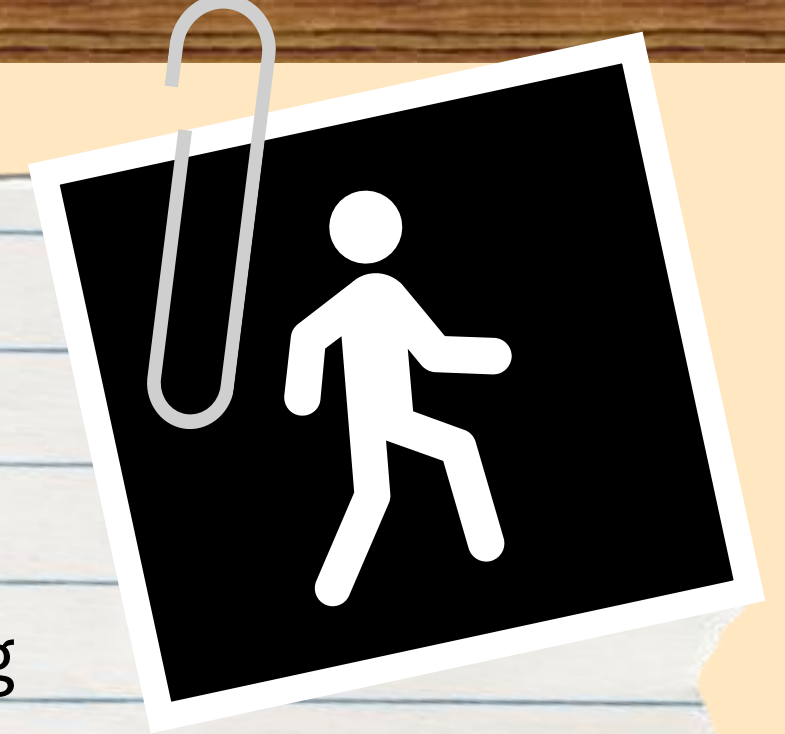
- Myth Buster Highlights

- Missing & Absent Youth (Dec.)
- Witness Prep (March)
- Post TPR/adoption Visitation (May)
- Child Behavior & Parenting Time (Aug.)
- DCF Court Reports (Sept.)
- PYA Discharge Support Payments (Nov.)

- Questions?

- Ideas for future Myth Busters

# Missing & Absent Youth



## MYTH

When a child (or youth) in DCF care or custody returns from being missing or absent from their home or placement, DCF just has to return them back.



## FACT

Both [110 CMR 7.115\(7\)](#) and DCF's [Children who are Missing or Absent Policy, DCF #2016-002](#), require DCF to take specific actions when a child returns from being missing or absent, including (1) notifying the parent/caregiver, last placement, local law enforcement and others; (2) determining whether it is safe and appropriate for the child to return to their last placement; (3) determining if the child was sexually exploited or trafficked; (4) determining if a medical screening and/or a mental or behavioral health evaluation is needed; and (5) supporting the child's return to placement or home.

# PRACTICE TIPS

## Know the Policy

DCF caseworkers can get engrained in their own practices, which may not reflect the policy. So, know the policy so you can advocate for your client!

## Have a Plan

Knowing if your client is likely to go absent/missing can help you plan together with them what would make them feel more welcomed at their placement or how to stay safe

## Remind DCF

Remind DCF (consistent with your client's position) of what it must do while the child is missing or absent and when they return

## Safe Keeping

Ask DCF to ensure they (or their contractor) keep the child's belongings safe at their last placement, since DCF must arrange for replacement of lost clothing or personal items the child needs when they return

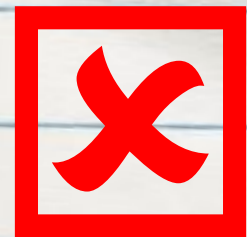
## Creativity = Safety

Be creative when it comes to what could constitute "any necessary placement stabilization services" (e.g., additional family time, sibling visits, and respite)

## Litigate

File a McKnight motion to compel performance and, if it interferes with the case goal, a failure to make reasonable efforts (Rashida motion).

# Witness Preparation



## MYTH

Preparing my client to testify at trial is too risky because I could violate the ethical prohibition on coaching testimony.



## FACT

Witness preparation is not only permissible but an essential component of effective advocacy. Rule 3.4 of the Massachusetts Rules of Professional Conduct-Fairness to Opposing Party & Counsel, prohibits attorneys from assisting a witness in providing false testimony and improperly influencing a witness's statement. These ethical constraints, however, do not preclude attorneys from thoroughly preparing their clients to testify truthfully and effectively.

# PRACTICE TIPS

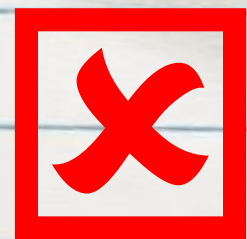
## Impermissible Tactics

- Signaling responses through verbal or nonverbal cues during the client's testimony
- Encouraging dishonesty
- Plotting misconduct with your client
- Drafting the client's testimony
- Improperly influencing a witness to give false testimony
- Falsely influencing another witness to change their testimony based on your client's false testimony

## Permissible (and Effective) Tactics

- Mock direct examinations
- Mock cross-examinations
- Clarifying complex legal concepts
- Reinforcing the importance of answering only the question asked
- Ensuring the client is comfortable discussing difficult topics in a way that remains truthful but does not unnecessarily harm their case

# Post-TPR/Post-Adoption Visitation



## MYTH

The trial court must order post-termination and post-adoption visitation after a TPR trial where there is a significant parent-child bond.



## FACT

The trial court must order post-termination and/or post-adoption parent-child visits where it finds that:

(1) such visits are **in the child's best interests** (as determined by bonding and other factors); **and**

(2) **a court order is necessary** to ensure that the visits will occur. Adoption of Vito, 431 Mass. 550, 565-567 (2000).

# Post-TPR/Post-Adoption Visitation



## FACT (cont.)

An adopted child may benefit from contact with their birth parents even if they did not form a strong bond with them. Rico, 453 Mass. at 759. Other relevant factors:

- **racial or ethnic identity**, see Vito, 431 Mass. at 565-567 (racial grounds may be relevant if grounded in actual needs and circumstances of individual child);
- **cultural and religious heritage**, see Custody of Odetta, 87 Mass. App. Ct. 576, 578-581 (2015) (upholding postadoption visitation order with family member able to preserve child's connection to Muslim heritage and paternal family);
- **whether a prospective adoptive family has been identified** and the child's prospects for adoption, see Rico, 453 Mass. at 754
- whether the child has developed "**strong, nurturing bonds**" with the proposed adoptive family, see Vito, 431 Mass. at 563 ; or
- anything else bearing on the child's best interests (e.g. sibling(s) still living at home).

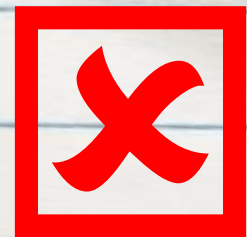
# Post-TPR/Post-Adoption Visitation



## FACT (cont.)

- A showing that post-adoption visits are in the best interest of the child is NOT ENOUGH
- Adoptive parents, like all legal parents, are presumed to act in their child's best interests
- You must also show that a court order is NECESSARY to ensure visits will occur. Consider:
  - Has a pre-adoptive family been identified? If so, do they support future visitation with the bio-parent?
  - How will you elicit testimony or other evidence that demonstrates that the pre-adoptive parents oppose or won't provide for visits?

# Child Behavior Around Parenting Time



## **MYTH**

When a child exhibits concerning or disruptive behaviors before or after parenting time, it is in the child's best interest that visits be decreased, suspended, or terminated—because the parent is the problem.



## **FACT**

Parenting time is a critical tool both for furthering a child's well-being and for achieving permanency for the child. A "child's distress or unusual behaviors around family time does not automatically indicate that spending time with parents and/or siblings is emotionally harmful to the child. [Univ. of Pittsburgh Office of Child Development, Changes in Children's Behavior Before and After Parent Visit](#)

# Things to Consider

## Other Explanations

- Child is upset at being separated from parent, or not visiting enough
- Foster parent is struggling with own negative emotions on parenting time, and their distress is affecting the child's behavior
- Noise and chaos of the DCF office & uncomfortable with DCF staff
- Child is missing out on important experiences at school or with friends in order to attend visits
- Travel to and from parenting time sessions may be difficult for the child

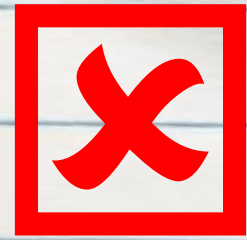
## How Else to Address it

- Encourage DCF, FPs, parents, and child to assess together whether changes to the time of day, day of the week, or location of family time would help
- Ask DCF to change visit location to a home or community setting
- Ask for kin to facilitate and/or supervise family time
- Having the parent create "rituals"—repeated patterns to use in greeting and saying goodbye
- Ask DCF to supplement visitation with virtual contact

## Other Practice Tips

- Hire a social work expert!
- Enroll the child in therapy, exploring and treating potential triggers of behavioral episodes
- Look for ways to support the foster home and the foster parents, such as in-home behavioral supports for the child, or ask the foster parent to ask for support and referrals from their DCF Family Resource Worker or their IFC agency case manager (if consistent with client position)

## DCF s. 21A Reports (“court reports”)



### **MYTH**

The whole DCF Section 21A report (a/k/a court report) comes in at trial, no matter what.



### **FACT**

The relevant [statute](#), [Adoption of Luc](#), and [Juvenile Court Rule 10](#) limit what DCF may include in court reports and what a court has discretion to admit into evidence from those reports at trial.

# PRACTICE TIPS

## Stick to the Rule

If a report contains statements that exceed the scope of Rule 10 (e.g., long narratives about each parent's personal and parenting histories), move to strike them

## Move to Correct

If a report contains incorrect statements of fact, move to strike or correct them. The report should be about "the facts"

## Do Motions in Limine

Shortly after the report and definitely in advance of trial, do motions in limine to exclude negative information referencing the Rule, statute, and the Luc criteria

## Offer Another Angle

Although DCF is supposed to send those 21A reports to you 2 days in advance so you can prepare to refute or supplement them, they often don't. Consider offering a verbal update to offer your client's perspective.

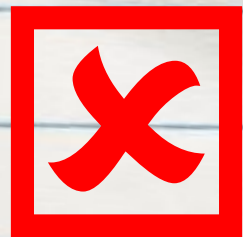
## Hire an Expert

Section 21A provides that the report of "[a]ny person who has made an investigation of the facts relating to the welfare of the child and is qualified as an expert according to the rules of the common law or by statute" may be admitted at trial or other evidentiary hearing.

## Litigate

Is the DCF caseworker really "an agent of the department" or an employee instead? Did they do an investigation as required? Would they otherwise be "qualified as an expert"?

# PYA Discharge Support Payments



## MYTH

If your PYA client decides to sign out of DCF's responsibility before turning 22, they are not eligible for a discharge support payment.



## FACT

Every young adult who signs on to continue their case with DCF once they turn 18 is eligible under [110 CMR 23.07\(1\)](#) to receive a discharge support payment from DCF if they (at the time of the payment request) are:

- (a) under the care and responsibility of the department;
- (b) between 18 and 21 years of age;
- (c) within 3 months prior to discharge from a department placement or planning to live independently as an adult;
- (d) making progress toward development of life skills as specified in their action plan;
- (e) willing to participate in the discharge planning process; and
- (f) able to afford the cost of the apartment or other living arrangement after the discharge support payments have been provided

# PRACTICE TIPS

## Remember

- Young adults can be signed in for any period of time before requesting a discharge support payment
- Young adults must only be “making progress” towards development of skills in their action plan; not required to have completed any action plan tasks.



Be Creative!



Take a holistic view

# Questions?

Cris Freitas  
**cfreitas@publiccounsel.net**

Contact the Legal Response Team with ideas for other Myth Busters!

**Giannis Rodriguez at grodriguez@publiccounsel.net**