(1-3)

STATE OF CONNECTICUT
SUPERIOR COURT
FOR JUVENILE MATTERS

239 Whalley Avenue NEW HAVEN, CONNECTICUT 06511
TELEPHONE: (203) 786-0337 FAX: (203) 786-0327

CHAMBERS OF
BERNADETTE CONWAY
CHIEF ADMINISTRATIVE JUDGE
JUVENILE MATTERS

July 31, 2018

Michael H. Agranoff, Esq.
101 West Shore Road
Ellington, CT 06029

Dear Attorney Agranoff,

I hope you are well. I am in receipt of your July 26, 2018 letter. The Branch's position remains unchanged as to your proposed rule change. As one of my predecessors pointed out as far back as 2010, in Connecticut, the rules of pleading in child protection cases are mandated by statutes that apply to many professionals, including social workers. Due to the nature of the interest at stake, these matters are expedited and by necessity less formal than other civil cases. While pleading is less structured, the statutorily required statement of facts is drafted to fully inform the judicial authority of the facts and issues in a case. Parents have the option of filing a response to the summary of facts and answers are not required in juvenile matters, only denials and admissions. Requiring social workers to comply with all of the detailed pleading requirements of Chapter 10 would hold them to the same standard as attorneys.

As in previous years, the Branch maintains the position that Section 34a-1 streamlines the process without compromising specificity. The juvenile rules adequately address pleading in juvenile matters and provide for clear and orderly processing of cases.

Sincerely,

Bernadette Conway, Judge

BC/bam

STATE OF CONNECTICUT
JUDICIAL BRANCH

COURT OPERATIONS DIVISION

LEGAL SERVICES
Joseph J. Del Ciampo, *Director of Legal Services*

100 Washington Street, P.O. Box 150474
Hartford, Connecticut 06115-0474
(860)706-5120 Fax (860) 566-3449
Judicial Branch Website: www.jud.ct.gov

September 7, 2018

Hon. Bernadette Conway
Chief Administrative Judge, Juvenile Matters
Juvenile Court
239 Whalley Avenue
New Haven, CT 06511

Dear Judge Conway:

At its meeting on May 14, 2018, the Rules Committee of the Superior Court considered the attached proposal submitted by Attorney Michael H. Agranoff proposing that Section 34a-1 (b) be amended to require fact pleading in juvenile matters.

After discussion, the Rules Committee decided to refer the matter to you and to the Department of Children and Families for consideration. Once you have considered the proposal, the Rules Committee would like your comments on it.

Please contact me with any questions.

Very truly yours,

Joseph J. Del Ciampo
Director of Legal Services

Attachment

c: Justice Andrew J. McDonald, Chair, Rules Committee of the Superior Court

STATE OF CONNECTICUT
JUDICIAL BRANCH

COURT OPERATIONS DIVISION

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100 Washington Street, P.O. Box 150474
Hartford, Connecticut 06115-0474
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Judicial Branch Website: www.jud.ct.gov

September 7, 2018

Maureen Duggan
Director of Legal Services
Department of Children and Families
505 Hudson Street
Hartford, CT 06106

Dear Attorney Duggan:

At its meeting on May 14, 2018, the Rules Committee of the Superior Court considered the attached proposal submitted by Attorney Michael H. Agranoff proposing that Section 34a-1 (b) be amended to require fact pleading in juvenile matters.

After discussion, the Rules Committee decided to refer the matter to Hon. Bernadette Conway, Chief Administrative Judge, Juvenile Matters, and the Department of Children and Families for consideration. Once you have considered the proposal, the Rules Committee would like your comments on it.

Please contact me with any questions.

Very truly yours,

Joseph J. Del Ciampo
Director of Legal Services

Attachment

c: Justice Andrew J. McDonald, Chair, Rules Committee of the Superior Court

LAW OFFICES OF MICHAEL H. AGRANOFF

101 West Shore Road
Ellington, CT 06029

www.agranofflaw.com

Ph. (860) 872-1024
Fax. (860) 871-1015

Michael H. Agranoff, Esq.
AttyMikeA@Agranofflaw.com

April 17, 2018

Joseph J. Del Ciampo, Esq.
Deputy Director, Legal Services
Connecticut Judicial Branch
100 Washington St., 3rd fl.
Hartford, CT 06106

Re: Request for Revision to C.P.B. Sec. 34a-1(b)

Dear Atty. Del Ciampo:

Enclosed is a proposed revision to C.P.B. Sec. 34a-1(b), to require fact pleading in juvenile matters.

Kindly forwards this to the Rules Committee for its consideration.

I will be glad to appear to testify when the matter is heard. Please keep me informed.

Thank you again for your kind attention to this matter.

Very truly yours,

MICHAEL H. AGRANOFF

Encl.

PROPOSED REVISION TO C.P.B. SEC. 34a-1(b)

TO REQUIRE FACT PLEADING IN JUVENILE MATTERS

I. PURPOSE

A. C.P.B. Sec. 34a-1(b) specifies certain provisions of the Practice Book that apply in juvenile matters.

B. Several provisions of C.P.B. Chapter 10 are listed as applicable in juvenile matters. These include technical matters such as the certification of pleadings and provisions for exhibits.

C. However, C.P.B. Sec. 10-1, which requires fact pleading, is **not** included in C.P.B. Sec. 34a-1(b). This means that juvenile pleadings can be made upon mere conclusory assertions without any facts listed.

D. While it is true that most juvenile pleadings, including petitions and motions, do list factual predicates, many do not. This wastes the time of lawyers and judges, and is an open invitation to abuse.

E. The purpose of this request is to modify C.P.B. Sec. 34a-1(b) to include C.P.B. Sec. 10-1 as applicable to juvenile matters, and thus specify clearly that a petition or motion in juvenile matters must include clear factual allegations that the judges and lawyers can rely upon in determining if a pleadings should be heard; and if so, if an evidentiary hearing is needed.

F. Note that there is no absolute right to an evidentiary hearing in juvenile matters, although this is customary done in termination proceedings. Not requiring fact pleadings is an open invitation to time-wasting and harassment of clients.

II. CASE STUDY OF THE LACK OF A FACT-PLEADING REQUIREMENT

A. On October 2, 2017, the undersigned attorney filed a motion to intervene ("MTI") in the Rockville Juvenile Court. Copy of motion attached hereto. **Note: all filings are redacted.**

B. On October 7, 2017, the undersigned attorney filed a memorandum in support of his MTI. Copy of memorandum attached hereto.

C. On October 11, 2017, DCF filed an objection to the MTI. Copy of objection attached hereto.

D. On October 12, 2017, after hearing oral argument, the Court (*Westbrook, J.)* granted the MTI.

E. On October 13, 2017, DCF filed a motion to reargue the MTI. Copy of motion attached hereto.

F. On October 16, 2017, the undersigned attorney filed an objection to DCF's motion to reargue. Copy of objection attached hereto.

G. On October 17, 2017, the undersigned attorney filed a supplemental memorandum in support of the MTI. Copy of the supplemental memorandum attached hereto.

H. The Court (*Westbrook, J.*) granted the motion to reargue as to reargument only, not for an evidentiary hearing.

I. On October 19, 2017, the Court (*Westbrook, J.*) heard arguments of counsel, denied the motion for reconsideration, and affirmed her order granting the MTI.

J. Judge Simón was subsequently assigned to hear all further proceedings on this particular case.

K. On March 16, 2018, DCF filed a motion to terminate intervenor status. Copy of that motion is attached hereto.

III. THE MOTION OF MARCH 16, 2018 WAS TOTALLY IMPROPER

A. Even a casual reading of the 3/16/18 motion shows that it is a second motion for reconsideration, although not styled as such. It states nothing other than that Judge Westbrook wrongly decided the MTI, and asks Judge Simón to issue a new ruling, revising the law of the case.

B. The 3/16/18 motion states absolutely no new facts which would call for revisiting the prior MTI decision. It simply asks that the MTI decision be heard yet again.

C. It was possible for the 3/16/18 motion to be filed, and not styled as a motion for reconsideration, because C.P.B. Sec. 34a-1(b) does not explicitly require the inclusion of C.P.B. 10-1, or fact pleading. In other words, counsel can lose a decision, not file a proper motion for reconsideration, but simply file its original motion, over and over, without stating any new facts that would merit a new hearing on its motion or objection.

D. Clearly, this is a time-wasting device, if not a vindictive one.

IV. REQUIRING FACT-PLEADING IN JUVENILE MATTERS WOULD AVOID TIME-WASTING, AND WOULD HAVE NO ADVERSE EFFECT UPON CHILD PROTECTION

A. Under current practice, there is nothing to prevent DCF from continuing to file objections on matters in which it has already been denied.

B. Requiring fact pleading would force DCF to state why its objection should be heard again, but having it state what new facts have come to light that require a rehearing.

C. Failing that, DCF would be required to style its motion, correctly, as a motion for reconsideration. The Court would then be appraised that DCF is seeking a second, or third or more, motion for reconsideration, and would be better placed to evaluate its merits on the papers.

D. Therefore, requiring fact pleading in juvenile matters would avoid wasting the time of the lawyers and the court, and would avoid harassment of litigants.

E. As noted, most juvenile pleadings do contain facts. The undersigned attorney, in 27 years of DCF defense practice, has never seen a single case in which the requirement of fact pleading would cause harm to a child. He invites the Rules Committee to ask the Commissioner of DCF if she feels to the contrary, and why.

F. DCF has enough advantages as it is. Requiring fact pleading is one small step toward balancing the rights of parents and other relatives of children with the need for child protection.

WHEREFORE, the undersigned attorney respectfully requests that the Rules Committee amend C.P.B. Sec. 34a-1(b), by adding C.P.B. Sec. 10-1 to the list of practice book rules that are applicable in juvenile proceedings.

Respectfully submitted,

MICHAEL H. AGRANOFF
Attorney

101 West Shore Road
Ellington, CT 06029
Tel: 860-872-1024
Fax: 860-871-1015
EM: attymikea@agranofflaw.com
Juris No.: 308941

Attach.

mha.judicial.delciampo.10.1.ltr

...N FOR INTERVENTION IN ...ENILE MATTERS
...M-141 Rev. 10-12
...G.S. §§ 46b-57; 46b-128(c)(d); 46b-136;
...B §§ 35a-4; 35a-20;
P.A. 12-1 June 12 Special Session, Secs. 272 and 273

Instructions
1. *Complete the form below to intervene in an existing case and file it with the Court Clerk.*
2. *You must also file an Appearance form (JD-JM-13).*

CONNECTICUT SUPERIOR COURT
JUVENILE MATTERS
www.jud.ct.gov

Notice: ***If this motion is granted, you must come to court in person, with or without counsel. Be advised that you will not be assigned an attorney at state expense unless the Judge determines that the interests of justice require such an assignment.***

ADA NOTICE
The Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, contact a court clerk or an ADA contact person listed at *www.jud.ct.gov/ADA*.

Docket number: [redacted]

Address of court: 25 SCHOOL ST., ROCKVILLE, CT 06066

Court date and time: 10/12/17 9:30 AM

Child's name (First, middle, last)	Date of birth	Name(s) of parent(s) or guardian(s) (First, middle initial, last)
[redacted]	[redacted]	DCF
[redacted]	[redacted]	DCF

☐ *"X" here if additional children are listed on a separate sheet.*

Name of person filing this motion (*Last, first, middle initial*): [redacted]

Phone number: [redacted]

Address of person filing this motion (*Number, street, town, state, zip code*): [redacted]

1. I am the *(State relationship to child or children)*: PATERNAL GRANDPARENTS AND FORMER CO-GUARDIANS
2. I want to be made a party to this case.
3. I request the Court's permission to intervene in this case:
   - ☐ as a sibling of a child committed to the Department of Children and Families.
   - ☒ as a person related to the child or youth by blood or marriage.
   - ☐ as an interested third party.
4. ☒ To be heard concerning visitation with the child or youth.
5. ☐ Only to request that the Department of Children and Families place the child or youth with me as a foster home placement.
6. ☐ Only to seek temporary custody of the child or youth.
7. ☐ Only to seek guardianship of the child or youth.
8. ☐ Only to take part in the dispositional phase of the case for the following reason other than seeking visitation, temporary custody or guardianship: _____
9. ☐ To request the court to modify its earlier award of guardianship.
10. ☐ To file a motion to reopen and modify the permanent legal guardianship.

Signature ▶ MH Off — Print name of person signing at left: MICHAEL H. AGRANOFF, Atty.

I certify that a copy of this motion was mailed or delivered on 10/2/17 (date) to all counsel and self-represented (*pro se*) parties of record.

Signature ▶ MH. Off — Print name of person signing at left: MICHAEL H. AGRANOFF

Name and address of each party this motion was mailed or delivered to*:
AAG, SC-JM, 25 SCHOOL ST., ROCKVILLE, CT 06066.
ALSO: TO BE CERTIFIED TO OTHER COUNSEL WHEN NAMES ARE KNOWN.

**If necessary, attach an additional sheet with name of each party and the address at which the copy was mailed or delivered to. You may use form JD-CV-67.*

Order *(To be completed by the court)*

The motion having been presented to, and heard by the court, it is ordered: ☒ **Granted** ☐ **Denied**

The court may terminate your intervenor status if your participation in the case is no longer warranted or necessary.

By the court (*Name of Judge*)	Signed (*Judge/Assistant Clerk*)	Print name of person signing at left	Date signed
Westbrook, J.	/S/		10/12/17

Mailed to RJ JVV
10/6/17

DOCKET NO.: [redacted] : SUPERIOR COURT

IN RE: [redacted] : JUVENILE MATTERS

DOB [redacted] : AT ROCKVILLE

: OCTOBER 6, 2017

CERTIFICATION OF SERVICE

The undersigned attorney hereby certifies, pursuant to C.P.B. Sec. 10-14, that service of his attached motion and appearance form, pursuant to C.P.B. Sec.10-12, was delivered to the following on October 6, 2017.

Dana E. Clark, Esq.
P.O. Box 538
Tolland, CT 06084
EM: attydanaclark@comcast.net

Edward J. Joy, Esq.
128 E. Center St.
1st fl.
Manchester, CT 06040-4065
EM: ejoylaw@gmail.com

Kerry Tarpey, Esq.
Devlin, Peters & Tarpey, LLC
11 South Road
P.O. Box 400
Somers, CT 06071
EM: kat@dptlaw.net

Michael H. Agranoff
Commissioner of Superior Court

mha.[redacted]cert.app.1

DOCKET NOS.: [redacted] : SUPERIOR COURT

IN RE: [redacted] : JUVENILE MATTERS

D.O.B. [redacted]

[redacted]

D.O.B. [redacted] : AT ROCKVILLE

: OCTOBER 7, 2017

MEMORANDUM OF PETITIONING PATERNAL GRANDPARENTS

IN SUPPORT OF THEIR MOTION TO INTERVENE

(Hearing already scheduled for Thursday, October 12, 2017, at 9:30 a.m.)

COME NOW PETITIONERS, [redacted] Paternal Grandmother of the above-captioned children (hereinafter, "PGM") and [redacted] Paternal Grandfather of the above-captioned children (hereinafter, "PGF", with PGM and PGF sometimes collectively referred to hereinafter as "PGP"), who by and through their undersigned attorney respectfully submit this memorandum in support of their motion to intervene, dated October 2, 2017, in the above-captioned case.

I. PROCEDURAL STATUS

A. PGP were named Co-Guardians of [redacted] and [redacted] hereinafter, the "Children"), by order of the Court of Probate for the District of Ellington, CT on October 12, 2016.

B. PGP are the parents of the Father of the Children, [redacted] (hereinafter, "Father").

C. On April 15, 2017, Father was arrested for the murder of his wife, [redacted], the late Mother of the Children.

D. On April 19, 2017, the Department of Children and Families (hereinafter, "DCF") removed the children on a 96-hour-hold, placing them with Maternal Aunt and Uncle-in-law, [redacted] (hereinafter, "Foster Parents"). DCF also filed for an Order of Temporary Custody (hereinafter, "OTC"). The OTC was granted by the Court (*Westbrook, J.*) on April 20, 2017, and subsequently sustained by agreement.

E. On September 11, 2017, a hearing was held at the Rockville Juvenile Court. On information and belief:

1. The children were committed to DCF.

2. The guardianship of PGP was ended as a matter of law.

3. A psychological evaluation was ordered, to include the Children, PGP, and Foster Parents. Those evaluations are scheduled for November 8-9, 2017.

4. A case status conference was scheduled for December 12, 2017, at 9:30 am, to review the psychological evaluation report.[1]

[1] The undersigned attorney has stated the facts as he understands them. He has not been allowed to review the full court file. If there are any material omissions or errors, he would appreciate these being called to his attention.

5. On information and belief, no visitation orders were issued, but PGP have been allowed supervised visits. These visits are supervised by Foster Parents or their family members, and are held at PGP's home, Foster Parents' home, or in the community by mutual agreement.

II. APPLICABLE LEGAL RULES

A. C.P.B. Sec. 35a-6

1. C.P.B. Sec. 35a-6 states as follows:

> When a court of competent jurisdiction has ordered legal guardianship of a child or youth to a person other than the biological parents of the child or youth prior to the juvenile court proceeding, the juvenile court shall determine at the time of the commitment of the child or youth to the commissioner of the department of children and families whether good cause exists to allow said legal guardian to participate in future proceedings as a party and what, if any further actions the commissioner of the department of children and families and the guardian are required to take.

2. On information and belief, no determination of C.P.B. Sec. 35a-6 applicability to PGP was made at the September 11, 2017 commitment of the Children to DCF.

B. C.P.B. Sec. 35a-4(d)

1. C.P.B. Sec. 35a-4(d) states as follows:

> In making a determination upon a motion to intervene, the judicial authority may consider: the timeliness of the motion as judged by the circumstances of the case; whether the movant has a direct and immediate interest in the case; whether the movant's interest is not adequately represented by existing parties; whether the intervention may cause delay in the proceedings or other prejudice to the existing parties; the necessity for or value of the intervention in

terms of resolving the controversy before the judicial authority; and the best interests of the child.

2. It is important to recall that the current motion to intervene is not for the purpose of custody or guardianship, and hence not subject to C.G.S. Secs. 46b-129 (c) or (d).

III. PGP QUALIFY FOR INTERVENTION UNDER PRACTICE BOOK RULES AS APPLIED TO THE FACTS OF THIS CASE

A. TIMELINESS

1. The motion to intervene is timely. It is filed less than thirty days after the commitment.

2. Further, on information and belief, PGP's attorney at the time was unfamiliar with the provisions of C.P.B. Sec. 35a-6. It would be unjust to penalize PGP for this error, especially as no harm will be done thereby.

B. DIRECT AND IMMEDIATE INTEREST

1. PGP have a self-evident interest in the proceedings. The children are bonded to them, and lived with them for a considerable time.

2. The Court itself must have assumed PGP's had a direct interest in the case, by including them in the scheduled psychological evaluation.

C. INTEREST NOT ADEQUATELY REPRESENTED

No existing parties adequately represent PGP's interest. While Father may be in support of this motion, his criminal legal issues preclude his giving full attention to the interests of PGP in the juvenile court.

D. DELAY OR PREJUDICE

This intervention will not delay the proceedings or prejudice any party. PGP's seek to be fully aware of the purposes of the psychological evaluation, and, for the present, to participate in as much visitation with the Children as possible. They do not intend to obstruct or inconvenience any parties.

E. NECESSITY FOR RESOLVING THE CONTROVERSY

1. PGP have already been invited to the psychological evaluation. They are entitled to know the same details that the other parties know, so that the Court may receive a psychological evaluation that is truly accurate and comprehensive.

2. Intervention will maintain all options for the court, depending upon the psychological evaluation results and criminal court outcome. It will allow PGP to testify and call witnesses, should that become necessary.

F. BEST INTERESTS OF THE CHILDREN

Nothing in this intervention will harm the children, who, as mentioned above, are bonded to PGP and visit with them regularly.

IV. SUMMARY

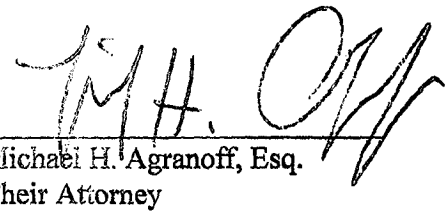
The point of this motion to intervene is not to try the case to disposition, but to permit PGP to be aware of file information, and to offer evidence to the Court as may be necessary. They have acted properly throughout this case, and should be allowed the right to intervene on behalf of their grandchildren.

WHEREFORE, petitioning intervening paternal grandparents pray that the Court grant their motion to intervene in this matter.

Respectfully submitted,

Petitioning Intervening Paternal Grandparents,

[redacted]

By: 

Michael H. Agranoff, Esq.
Their Attorney
Law Offices of M.H. Agranoff
101 West Shore Road
Ellington, CT 06029
Tel: 860-872-1024
Fax: 860-871-1015
EM: attymikea@agranofflaw.com

CERTIFICATION

I hereby certify that a copy of the foregoing was send to all counsel and pro se parties of record, as indicated, on this 7th day of October, 2017, to wit:

Cynthia Mahon, Esq.
Asst. Attorney General
Superior Court – Juvenile
25 School St.
Rockville, CT 06066
EM: cynthia.mahon@ct.gov

Dana E. Clark, Esq.
P.O. Box 538
Tolland, CT 06084
EM: attydanaclark@comcast.net

Edward Joy, Esq.
128 E. Center St.
1st fl.
Manchester, CT 06040-5204
EM: ejoylaw@gmail.com

Kerry Tarpey, Esq.
Devlin, Peters & Tarpey, LLC
11 South Road
P.O. Box 400
Somers, T 06071
EM: kat@dptlaw.net

Michael H. Agranoff
Commissioner of Superior Court

[redacted]mti.brief

DOCKET NOS.: [redacted]

IN RE: [redacted]
IN RE: [redacted]

:: SUPERIOR COURT FOR
:: JUVENILE MATTERS
::
:: ROCKVILLE
::
::
:: OCTOBER 11, 2017

PETITIONER'S OBJECTION TO MOTION TO INTERVENE BY PATERNAL GRANDPARENTS

1. On September 11, 2017, this Court adjudicated the children neglected and committed them to the Department of Children and Families. That judgment terminated the grandparents' prior appointment as guardian in the probate court and their status as a party in the above-captioned case.

2. As the former guardians, it is the movants' burden of proof to demonstrate "good cause" to be allowed to participate in future proceedings in this Court. Practice Book § 35a-6.

3. The movant, through their attorney, Attorney Michael Agranoff, suggests that the prior attorney for the paternal grandparents, Attorney Haley Schaefer, was unfamiliar with Practice Book § 35a-6 and its implications. This representation is inaccurate. Cf. In re Brian G., 2007 WL4171254, n. 12 (Jul. 11, 2007) (Foley, J.).

4. Assistant Attorney General Benjamin Zivyon in an email dated August 24, 2017 expressly advised counsel for paternal grandparents of the effect of Section 35a-6, and that the purpose of having them participate in the psychological evaluation was to help determine whether they should be allowed to have any involvement in future court proceedings.

ORAL ARGUMENT REQUESTED/
TESTIMONY WILL BE REQUIRED

5. In the motion for psychological evaluation, petitioner avers: "The Order of Temporary Custody and the Neglect Petition were filed due to the facts that the minor children's mother was murdered, on or about December 23, 2015, that the respondent father was arrested and charged for the murder of the mother on or about April 11, 2017, that while the paternal grandparents obtained the status of co-guardianship from the Court of Probate on or about October 12, 2017, the children were cared by the father, that the children were not in therapy for at least six months before the filing of the petition, that the father is unfit to care for the children under the circumstances of this matter, that the paternal grandparents do not believe that the father murdered his wife and that neither paternal grandparent nor the respondent father are able and/or willing to provide the proper emotional support these grief stricken children need to emotionally and psychologically deal with the loss of their mother under such tragic circumstances." (Motion for Evaluation, p. 2)

6. Because the purpose of the psychological evaluation was, in part, to inform whether the paternal grandparents should have future involvement in this case and because that evaluation has not yet taken place, the motion to intervene is premature.

WHEREFORE, the Department of Children and Families respectfully objects.

THE PETITIONER,
JOETTE KATZ, COMMISSIONER
DEPT. OF CHILDREN AND FAMILIES

GEORGE JEPSEN
ATTORNEY GENERAL

BY: _____

John E. Tucker
Assistant Attorney General
Juris No. 414085
Office of the Attorney General
MacKenzie Hall
110 Sherman Street
Hartford, Connecticut 06105
Tel. (860) 808-5480
Fax (860) 808-5595

CERTIFICATION

This is to certify that a copy of this document was sent to Court and delivered electronically on October 11, 2017 to all attorneys and self-represented parties of record as follows:

Attorney Dana Clark
Email: attydanaclark@comcast.net

Attorney Edward Joy
Email: ejoylaw@gmail.com

Attorney Kerry Tarpey
Email: kat@dptlaw.net

Attorney Michael Agranoff
Email: attymikea@agranofflaw.com

John E. Tucker
Assistant Attorney General

DOCKET NOS. [redacted]

IN RE: [redacted]
IN RE: [redacted]

:: SUPERIOR COURT FOR
:: JUVENILE MATTERS
::
:: ROCKVILLE
::
::
:: OCTOBER 13, 2017

PETITIONER'S MOTION TO REARGUE AND VACATE ORDER GRANTING MOTION TO INTERVENE BY PATERNAL GRANDPARENTS AND FOR EVIDENTIARY HEARING

In support of this motion, petitioner avers:

1. On October 12, 2017, after oral argument, this court (Westbrook, J.) granted the motion of the paternal grandparents to intervene in the above-captioned matter.

2. Previously, on September 11, 2017, the children were adjudicated neglected and committed to the Department of Children and Families, thereby terminating the movant's status as former guardians appointed by probate court.

3. At the short calendar hearing on October 12, 2017 counsel for the paternal grandparents, Attorney Michael Agranoff, made many representations of fact.

4. "[I]t is well settled that statements of counsel are not evidence." *Margulies* v. *Cassano*, 52 Conn. App. 116, 120, *cert. denied*, 248 Conn. 914 (1999).

5. Both child's counsel and counsel for petitioner disputed the majority of "facts" articulated by Attorney Agranoff. Child's counsel, the only counsel in the courtroom who was present for the September 11th hearing, opined that seventy-five percent of the representations by Attorney Agranoff were inaccurate.

6. The undersigned requested both in his written objection and orally on the record an evidentiary hearing on the issue of intervention. Notwithstanding this request, the court proceeded to rule on the merits of the motion for intervention without affording petitioner or child's counsel an evidentiary hearing.

7. In granting the motion the court reasoned that intervention was warranted because of the movants' prior status as guardians of the children. Under this reasoning all former guardians would automatically be entitled to intervention following adjudication of

neglect or abuse. The court's reasoning is inconsistent with Practice Book §35a-6, which imposes the burden of proof on the movants to show "good cause" to be allowed to participate in future proceedings.

8. There was no evidentiary record before the court. In the absence of any evidentiary record the movants could not have satisfied their burden of establishing "good cause."

9. It was clear from the short calendar hearing that there were many material facts in dispute. Although it is the movants' burden of proof to establish "good cause", in response to the movants' presentation of evidence, petitioner intends to present evidence that it is not in the children's best interest to allow intervention at this time, and related to the movants' neglect of the above named children that should disqualify them from further participation in this case.

10. The trial court's decision granting intervention was unlawful in that there was no factual basis for the court's decision and that the decision was inconsistent with Practice Book §35a-6. It is respectfully submitted that the trial court's decision should be immediately vacated, and an evidentiary hearing should be scheduled.

WHEREFORE, Pursuant to Practice Book §34a-1, 11-12, petitioner, the Department of Children and Families, respectfully moves for the following relief: (1) Immediately vacate order of October 12, 2017 granting paternal grandparents intervention, and (2) Schedule an evidentiary hearing on the motion for intervention so that the motion to intervene may lawfully be adjudicated.

THE PETITIONER,
JOETTE KATZ, COMMISSIONER
DEPT. OF CHILDREN AND FAMILIES

GEORGE JEPSEN
ATTORNEY GENERAL

BY: _____

John E. Tucker
Assistant Attorney General
Juris No. 414085
Office of the Attorney General
MacKenzie Hall
110 Sherman Street
Hartford, Connecticut 06105
Tel. (860) 808-5480
Fax (860) 808-5595
John.tucker@ct.gov

ORDER

The foregoing motion having been presented, it is hereby ORDERED:

GRANTED/DENIED.

By the Court,

_____ _____

Date Judge / Clerk

CERTIFICATION

This is to certify that a copy of this document was sent to Court and delivered electronically on October 13, 2017 to all attorneys and self-represented parties of record as follows:

Attorney Dana Clark
Email: attydanaclark@comcast.net

Attorney Edward Joy
Email: ejoylaw@gmail.com

Attorney Kerry Tarpey
Email: kat@dptlaw.net

Attorney Michael Agranoff
Email: attymikea@agranofflaw.com

John E. Tucker
Assistant Attorney General

DOCKET NOS.: [redacted] : SUPERIOR COURT

IN RE: [redacted] : JUVENILE MATTERS

D.O.B. [redacted]

[redacted]

D.O.B. [redacted] : AT ROCKVILLE

: OCTOBER 16, 2017

OBJECTION OF INTERVENING PATERNAL GRANDPARENTS TO DCF'S MOTION TO REARGUE, VACATE ORDER FOR INTERVENTION, AND FOR EVIDENTIARY HEARING

(Westbrook, J.)

COME NOW INTERVENING PATERNAL GRANDPARENTS, [redacted] (hereinafter, "PGP"), who by and through their undersigned attorney respectfully submit this objection to DCF's motion to reargue, vacate the intervention order, and have an evidentiary hearing in the above-captioned case. In support of this objection, PGP state as follows:

I. INTRODUCTION

A. PGP filed a motion to intervene ("MTI") in this matter, dated October 2, 2017.

B. PGP filed a memorandum in support of the MTI, dated October 7, 2017 (hereinafter, "Memorandum").

C. DCF filed an objection to the MTI, dated October 11, 2017 (hereinafter, "Objection".

D. The Court (*Westbrook, J.*) heard the MTI on October 12, 2017, and granted it.

E. DCF filed its motion to reargue on October 13, 2017 (hereinafter, "Motion"). The Motion also asked that the order granting intervention to PGP be vacated, and that an evidentiary hearing be held.

II. THE COURT RULED ORALLY ON THE MTI

A. The Court gave an oral ruling granting the MTI. Undersigned counsel does not have a transcript, and none was provided by DCF in its Motion.

B. The Motion recites, at para. 7, that "the court reasoned that intervention was warranted because of the movants' prior status as guardians of the children."

C. The recollection of the undersigned attorney is somewhat different. He believes that the court stated that the PGP were prior guardians of the children, that they had permissive intervention pursuant to C.P.B. Sec. 35a-6, and that such permission would be granted, since good cause had been shown pursuant to C.P.B. Sec. 35a-4(d).

III. LAW GOVERNING MOTIONS TO REARGUE

The law governing motions to reargue is well known. As one court stated:

> [T]he purpose of a reargument is...to demonstrate to the court that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts....[A] motion to reargue [however] is not to be used as an opportunity to have a second bite of the apple.

Gibbs v. Spinner, 103 Conn. App. 502, 507 (2007), citing *Opoku v. Grant*, 63 Conn. App. 686, 698, 778 A. 2d 981, 985 (2001).

In determining the suitability of motions to reargue, courts have consistently held that such motions should not be used to raise law or claims **which could have been raised in the original motion or objection thereto,** absent a good reason why those claims were not made the first time around. *Chapman Lumber, Inc. v. Tager*, 288 Conn. 69, 95 n.28, 952 A. 2d 1, 20 n.28 (2008).

IV. ARGUMENTS OF DCF IN SUPPORT OF ITS MOTION TO REARGUE

DCF argues in support of its Motion using the following grounds:

A. The undersigned, Atty. Agranoff, made several misrepresentations of fact to the court during oral argument.

B. The Court declined to allow a full evidentiary hearing on the MTI.

C. There was no factual basis for the Court's decision.[1]

V. THE COURT DID NOT RELY ON ATTY. AGRANOFF'S FACTUAL REPRESENTATIONS IN ITS DECISION

A. Most of the argument on October 12, 2017 centered around whether or not PGP's former counsel fully understood the proceedings. However, the Court made no mention of this in its decision. The Court relied on the factors listed in C.P.B. Sec. 35a-

[1] The Motion recites, twice, that the Court's decision was "unlawful." The undersigned attorney finds this objectionable, and believes that those recitations may themselves be the subject of sanctions. Every lawyer has disagreements with Judges, but to call their actions "unlawful" requires more than what was shown in the Motion. At most, the Motion posits that the Court misapplied the law, not that its ruling was "unlawful."

4(d), and the fact that the Objection failed to state any substantive disagreement with the intervention factors as detailed in Para. III of the Memorandum.

B. To discuss more fully the issue of the quality of PGP's prior representation would be to engage in a side issue. Suffice it to say that the undersigned attorney accepts counsel's representation that the matter was discussed, but does not agree that prior counsel truly understood it. This is underscored by his October 14, 2017 filings regarding the psychological evaluation, and the fact that the "understanding" of counsel was not put on the record on September 11, 2017. If the Court wants a fuller discussion, the undersigned would be glad to expound at length based upon his Juvenile Court experience as applied to the facts of this case.

VI. THE COURT WAS AT LIBERTY TO DENY AN EVIDENTIARY HEARING

A. The Motion makes much of the fact that DCF was denied an evidentiary hearing, but cites no statute, practice book rule, or court decision stating that it was entitled to one as a matter of right, with no Court discretion in the matter. Undersigned counsel, after search, and discussion with other counsel, has found no such statute, rule, or decision.

B. C.P.B. Sec. 34a-1 contains the general discussion of Juvenile Court motions. It contains not one word to the effect that either oral argument or an evidentiary hearing, even if requested, must be granted as a matter of right.

C. C.P.B. Sec. 11-18, though not applicable to Juvenile Court proceedings, is instructive. It details certain circumstances in Civil Court in which oral argument is a matter of right, and may not be curtailed by the Court. No similar section appears regarding the unfettered right to an evidentiary hearing.

D. The conclusion is inescapable: the Court, in its sound discretion, may grant oral argument and may deny an evidentiary hearing. This has also been the common practice in Juvenile Court motion hearings for decades.

VII. THE COURT HAD A FACTUAL BASIS FOR ITS DECISION TO GRANT INTERVENTION TO PATERNAL GRANDPARENTS

A. A cursory review of the Memorandum reveals this:

1. Paragraph I states factual matters which were not disputed in the Objection or at oral argument.

2. Paragraph II states applicable Practice Book rules. These were not disputed in the Objection or at oral argument.

3. Paragraph III lists the six non-exclusive factors of C.P.B. Sec. 35a-4(d), and states that PGP have met their burden under those factors.

4. The only item disputed by DCF was the statement, at Para. III-A-2 of the Memorandum, that PGP's attorney at the time was unfamiliar with the provisions of C.P.B. 35a-6. [2] **There was no stated reason, in either the Objection or at oral**

[2] As stated above, undersigned counsel will be glad to expound upon this further if the Court requests.

argument, as to why PGP were not suitable under the six factors. There was only a promise by DCF that an evidentiary hearing would "explain" their unsuitability.

B. As noted in para. III supra, a motion to reargue should not be used to raise claims that could have been raised in the original objection. It would have been very easy for DCF, in its Objection, to dispute, substantively, any of the specific factors clearly mentioned in the Memorandum. DCF did not do so, focusing instead on an argument regarding PGP's prior counsel. The only item in the Objection even resembling an evidentiary dispute is the claim, at Para. 5, of statements made in the motion for the psychological evaluation which are negative to PGP. The Court made it clear in its oral decision that it did consider the assertion that PGP supported Father's innocence, and specifically dismissed that as a valid ground to deny intervention under the Constitutional presumption of innocence in criminal matters.

C. Apparently, DCF wishes to call witnesses to "prove" the allegation, stated in the same para. 5, that "paternal grandparents...are [unable] and/or [unwilling] to provide the proper emotional support these grief stricken [sic] children need to emotionally and psychologically deal with the loss of their mother under such tragic circumstances." But of course, that was one purpose of the psychological evaluation itself, as the Order for Psychological Evaluation explicitly reveals[3]. Hence, the Court not only properly considered the Memorandum, Objection, and oral argument, but properly determined that an evidentiary hearing would be a waste of time at best, and at worst, an attempt to try the case before the psychological evaluation evidence was received.

---

[3] The Order, JD-JM-46, approved September 11, 2017 by the court (*Westbrook, J.*) states, at p. 3, that one purpose of the evaluation is to "assess the role of PGP in the lives of [redacted] if any"; and also states, at p. 4, that another purpose is to assess the "future role of paternal grandparents."

VIII. EQUITY FAVORS PGP INTERVENTION

The granting of the motion to intervene allowed undersigned counsel to review the file, determine the actual purpose of the psychological evaluation (which had not been previously made known to PGP), and to prepare his clients for the evaluation. It will forever be a mystery to the undersigned attorney why DCF so vehemently opposes PGP's motion to intervene, especially as DCF knowingly neglected to place, on the record, for all to see, at the September 11, 2017 hearing, any determination of C.P.B. Sec. 35a-6 applicability to the PGP. The Court may draw its own conclusions as to this omission, but it is obvious to the undersigned attorney that the full resources of the State of Connecticut are directed at removing PGP from the lives of their grandchildren by any means whatsoever.

IX. SUMMARY

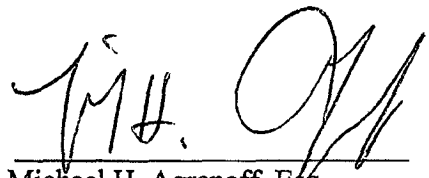
The Court, in granting PGP's motion to intervene, had an adequate factual basis before it, in the Memorandum, Objection, and oral argument thereon. The Objection alluded to, but failed to specify, any factual dispute as to the substantive factors regarding intervention. DCF should not be allowed a second bite at the apple, which would waste time on a preliminary matter. Depending upon the results of the psychological evaluation, and any hearing thereon, DCF is free to move for de-intervention of PGP; stating its reasons with specificity.

WHEREFORE, paternal grandparents pray that the Court DENY the motion to reargue, and also deny the motion to vacate the order granting intervention, and the motion for an evidentiary hearing.

Respectfully submitted,

Intervening Paternal Grandparents,

[redacted]

By: 

Michael H. Agranoff, Esq.
Their Attorney

Law Offices of M.H. Agranoff
101 West Shore Road
Ellington, CT 06029
Tel: 860-872-1024
Fax: 860-871-1015
EM: attymikea@agranofflaw.com

CERTIFICATION

I hereby certify that a copy of the foregoing was send to all counsel and pro se parties of record, via e-mail, on this 16th day of October, 2017, to wit:

John Tucker, Esq.
EM: john.tucker@ct.gov

Dana E. Clark, Esq.
EM: attydanaclark@comcast.net

Edward Joy, Esq.
EM: ejoylaw@gmail.com

Kerry Tarpey, Esq.
EM: kat@dptlaw.net

Michael H. Agranoff
Commissioner of Superior Court

mha[redacted]mti.reargue.obj

DOCKET NOS.: [redacted] : SUPERIOR COURT

IN RE: [redacted] : JUVENILE MATTERS

D.O.B. [redacted]

[redacted]

D.O.B. [redacted] : AT ROCKVILLE

: OCTOBER 17, 2017

SUPPLEMENTAL MEMORANDUM OF

INTERVENING PATERNAL GRANDPARENTS

IN SUPPORT OF THEIR MOTION TO INTERVENE

COME NOW INTERVENING PATERNAL GRANDPARENTS, [redacted] (hereinafter, "PGP"), who by and through their undersigned attorney respectfully submit this supplemental memorandum in support of their motion to intervene in the above-captioned matter.

I. INTRODUCTION

A. PGP filed a motion to intervene ("MTI") in this matter, dated October 2, 2017.

B. PGP filed a memorandum in support of the MTI, dated October 7, 2017 (hereinafter, "Memorandum").

C. DCF filed an objection to the MTI, dated October 11, 2017 (hereinafter, "Objection".

D. The Court (*Westbrook, J.*) heard the MTI on October 12, 2017, and granted it.

E. DCF filed its motion to reargue on October 13, 2017 (hereinafter, "Motion"). The Motion also asked that the order granting intervention to PGP be vacated, and that an evidentiary hearing be held.

F. PGP filed a memorandum in opposition to the Motion, dated October 16, 2017 (hereinafter, "Motion Objection").

G. The Court (*Westbrook, J.*) granted the Motion on October 16, 2017, as to reargument only, not an evidentiary hearing, and set the matter down for short calendar on October 19, 2017.

II. DCF SHOULD BE ESTOPPED FROM OPPOSING PGP'S INTERVENTION IN THIS CASE, AT LEAST UNTIL THE PSYCHOLOGICAL EVALUATION IS RELEASED

A. On August 24, 2017, DCF filed a Motion for Evaluations, as appears of record (hereinafter, "Evaluation Motion").

B. The Evaluation Motion, at p. 1, para. c, asked that PGP be ordered "to submit and cooperate with said evaluation."

C. The Court cannot compel non-parties to submit to a psychological evaluation. DCF apparently relied on C.P.B. Sec. 34a-21(a), which states in relevant part:

> The judicial authority...may...order a...mental examination of a parent of guardian whose competency or ability to care for a child or youth is at issue.

D. The Evaluation Motion, at pp. 2-3, para 3, also recites alleged wrongdoing by PGP.

E. The Evaluation Motion, at p. 3, para. 5, states, inter alia, that:

> The requested evaluation will... aid both the Court and [DCF]... to facilitate reunification, if deemed appropriate, and if not, to **assist the parties** to provide the children the love, support, and proper family contact that could help healing and proper care for these children. (Emphasis added).

F. On September 11, 2017, the children were adjudicated neglected. As part of that proceeding, the Evaluation Motion was granted. Also in that proceeding, no determination of the applicability of C.P.B. 35a-6 was made regarding the PGP.

G. The Order for Psychological Evaluation, also signed by the Court (*Westbrook, J.*) on September 11, 2017, states the standard purposes of a psychological evaluation, and then adds two additional ones:

1. Page 3. "Assess the role of PGP in the lives o[redacted] if any."

2. Page 4. "Assess future role of Paternal grandparents [redacted]."

H. It is by now obvious to the undersigned attorney why experienced counsel for DCF did not put the 35a-6 question before the court:

1. If the PGP remained as parties, then they could review the psychological evaluation, cross-examine the evaluator, and, if appropriate, request release of records to their own psychologist for his expert testimony to the court. DCF, which cherry-picked the evaluator in its Evaluation Motion[1], was loath to allow that possibility.

2. If the PGP were not parties, then how could they cross-examine the evaluation of themselves or otherwise plead their case? What would happen to due

[1] The Evaluation Motion specifically asked for the appointment of Dr. Suzanne Ciaramella. The undersigned attorney has never seen this in a psychological evaluation motion. The standard practice is that the CSO, after hearing of any objections from the parties, arranges for the evaluator.

process? Further, what basis would there be for the Court to order them, as non-parties, to submit to the evaluation?

3. The apparent "solution" to this dilemma was, as argued orally on October 12, 2017, an "understanding" among the lawyers that PGP would be in limbo, with no rights, prior to the release of the psychological evaluation. The Court (*Westbrook, J.*) explained in its ruling on October 12, 2017, that such understanding was not binding on the Court.

I. Sadly, the attorney for PGP at the time did not understand the legal implications, even if she said she did. Said prior attorney did not understand psychological evaluations, did not reveal to PGP the purpose of the evaluations or the questions to be asked, and even went so far as to ask Atty. Zivyon, the AAG, for permission to include certain persons as collateral contacts[2], not realizing that the Court made that decision in case of a dispute, per C.P.B. Sec. 34a-21(c).

J. However one interprets DCF's motives or the strength of its case, it is beyond dispute that DCF knew that, if the PGP were to be subjected to a psychological evaluation to determine their suitability to even see the children, then they should be parties to the case and retain their rights.

K. When PGP, through undersigned counsel, filed the MTI, all of these issues came out of the closet. DCF now claims that PGP are unsuitable even to intervene, before the psychological evaluation intended to address that claim has even begun, let alone been released.

[2] E-mails to this effect were sent between Atty. Schaefer and Atty. Zivyon.

L. DCF, by its own actions, led PGP to reasonably believe that they were being evaluated as parties to a court proceeding in which they had rights. It would be a total miscarriage of justice to allow DCF to now claim that PGP should not be parties to the case, and to have no due process rights of parties.

III. DCF IS ATTEMPTING TO DISPOSE OF PGP, AND VIRTUALLY TAKE THE CASE TO DISPOSITION, BEFORE THE EVALUATION HAS BEEN RELEASED

A. If an evidentiary hearing were held, the most that DCF could prove is that PGP committed some indiscretions. If DCF felt that PGP should be ipso facto ruled out as interveners, it was free to have so moved on September 11, 2017.

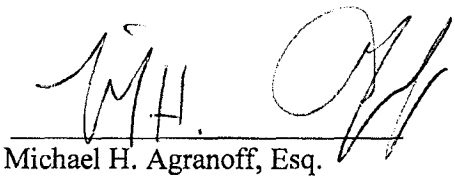
B. It is difficult to imagine denying intervener status to persons who were, up until adjudication, the co-guardians of the children, and are now the subjects of an evaluation that could potentially determine that they may never see their grandchildren again, or may see them only under severely restricted conditions.

WHEREFORE, paternal grandparents pray that the Court OVERRULE DCF's objection to their motion to intervene, and affirm its prior ruling granting intervention, and let this case move as the evidence develops.

Respectfully submitted,

Intervening Paternal Grandparents,

[redacted]

By: 

Michael H. Agranoff, Esq.
Their Attorney

Law Offices of M.H. Agranoff
101 West Shore Road
Ellington, CT 06029
Tel: 860-872-1024
Fax: 860-871-1015
EM: attymikea@agranofflaw.com

CERTIFICATION

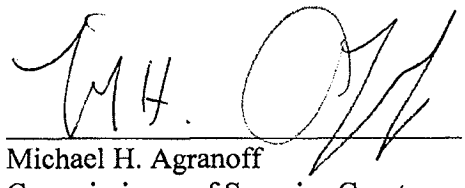
I hereby certify that a copy of the foregoing was send to all counsel and pro se parties of record, via e-mail, on this 17th day of October, 2017, to wit:

John Tucker, Esq.
EM: john.tucker@ct.gov

Dana E. Clark, Esq.
EM: attydanaclark@comcast.net

Edward Joy, Esq.
EM: ejoylaw@gmail.com

Kerry Tarpey, Esq.
EM: kat@dptlaw.net



Michael H. Agranoff
Commissioner of Superior Court

mh[redacted]mti.brief.suppl

DOCKET NOS: [redacted]

IN RE: [redacted]

:: SUPERIOR COURT FOR
:: JUVENILE MATTERS
::
:: ELEVENTH JUDICIAL DISTRICT
::
:: AT ROCKVILLE
::
:: MARCH 16, 2018

MOTION TO TERMINATE INTERVENOR STATUS

In accordance with Connecticut Practice Book § 35a-4(f), the Petitioner, Joette Katz, Commissioner of the Department of Children and Families (hereinafter DCF), hereby moves to terminate the intervenor status conferred on [redacted] the paternal grandparents of the above-named children, pursuant to an order issued by this Court (Westbrook, J.) on October 12, 2017 and to rule on this motion before, during or at the conclusion of the hearing to be held on March 21, 2018.

In support of this motion Petitioner states the following:

1. On October 12, 2017, over the objection of the Petitioner, this Court (Westbrook, J.) granted a Motion to Intervene dated October 2, 2017, filed on behalf of [redacted] (hereinafter Intervenors) the paternal grandparents and former co-guardians of the above-named children.
2. On October 19, 2017, this Court (Westbrook, J.) denied the Petitioner's motion for reconsideration of and to vacate the October 12, 2017, thus

ORAL ARGUMENT IS REQUESTED
TESTIMONY MAY BE REQUIRED

allowing the intervenors to remain parties in the post disposition proceedings.

3. The conclusion and the recommendation of the court-ordered psychological evaluation report of Dr. Suzanne Ciaramella and the circumstances of the case, including those that transpired after the order, support the conclusion that the intervention is not necessary and should be terminated.

4. Termination of the intervenors' status is also appropriate because they have no cognizable direct or immediate legal interest in the case; an existing party, the Respondent father, can adequately represent their interest. In fact, the intervenors support the Respondent father's position and thus their interest merges with his.

5. The continued intervention has and will unnecessarily encumber the proceedings causing unwarranted delays in the proceedings and may prejudice other parties.

6. There is neither necessity nor value of the intervention in terms of resolving the controversies before the court.

7. Under the circumstances, the intervenors' position could be sufficiently brought to the attention of the Court via their testimony.

8. Granting the motion is in the best interest of the children.

WHEREFORE, the Petitioner respectfully urges this Court to terminate the intervenors status of the Intervenors [redacted] and to rule on the motion before, during or at the conclusion of the hearing to be held on March 21, 2018.

THE PETITIONER,

JOETTE KATZ
COMMISSIONER
DEPARTMENT OF CHILDREN & FAMILIES

GEORGE JEPSEN
ATTORNEY GENERAL

BY: Benjamin Zivyon

Benjamin Zivyon
Assistant Attorney General
Juris No. 085145
Office of the Attorney General
110 Sherman Street
Hartford, Connecticut 06105
Tel. (860) 808-5480
Fax (860) 808-5595