2-2. Proposal by Attorney Michael H. Agranoff to revise Section 34a-1 to require fact pleading in juvenile matters. On 5-14-18, RC referred matter to Judge Conway, CAJ, Juvenile Matters, and to DCF for consideration. (Received Judge Conway's comments on 9-11-18 dated 7-31-18; referred to DCF on 9-9-18.) **On 9-17-18, Attorney Agranoff addressed committee; RC tabled matter to allow for receipt of comments from DCF and for Attorney Agranoff to review and respond to Judge Conway's comments. On 9-27-18, comments received from DCF. On 9-19-18, response received from Attorney Agranoff.**

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


September 19, 2018

Atty. Joseph DelCiampo
Superior Court
Rules Committee
Sent via e-mail

Re: **Fact Pleading and MSJ in Juvenile Matters**

Dear Atty. DelCiampo:

At the September 17, 2018 meeting, the Rules Committee heard me regarding Agenda item 1-3: fact pleading in juvenile matters cases. Justice McDonald kindly allowed me to present a letter to the committee before it makes its decision.

Therefore, I ask that you please present this letter to the members of the Rules Committee.

FACT PLEADING IS ADEQUATE WITH REGARD TO INITIAL PETITIONS

As Judge Conway's letter of July 31, 2018 stated, in juvenile petitions, DCF files a summary of facts, and the parent may file a response to the summary of facts. This adequately satisfies any fact pleading requirement.

Therefore, I suggest that C.P.B. Sec. 34a-1(b) be revised to state:

> The provisions of Sections...10-1...of the rules of practice shall apply to juvenile matters in the civil session as defined by General Statutes Sec. 46b-121; with the proviso that a "Summary of Facts" in a juvenile petition may satisfactorily meet this requirement.

THE LACK OF FACT-PLEADING IS INADEQUATE REGARDING JUVENILE COURT MOTIONS

Many motions filed in juvenile court subsequent to the initial petition are totally lacking in any factual basis. This wastes times, shows laziness on the fact of the pleaders, and makes a reasonable court hearing nearly impossible.

Three examples will suffice. The undersigned has seen many, many others.

Exhibit A, 1 page, copy affixed hereto is one such motion. It is totally devoid of facts as to why an independent guardian ad litem would better serve the children's needed. It recites that evidence may "be elicited through testimony."

Exhibit, 2 pages, copy affixed hereto is another such motion. It is totally devoid of facts as to why a conflict of interest exists. In this case, the Judge ordered the movant to file a supplemental motion explaining the conflict; which he did.

Exhibit 3, 3 pages, copy affixed hereto is another such motion. The motion is actually a motion for reconsideration, without stating any of the practice book grounds for such a motion. It attempts to secure reconsideration without reciting any new facts or legal errors, but merely repeats allegations and arguments that were already litigated. This motion amounted to pure harassment and waste of taxpayer money.

The upshot is to create a culture in which Connecticut attorneys, who are trained better, merely file conclusory motions hoping to find a sympathetic judge who will listen to arguments at court that their opponents are unprepared for.[1]

There is simply no justifiable argument for not requiring fact pleading, with, as mentioned above, an allowance for the summary of facts in a juvenile petition to suffice.

SUMMARY JUDGMENT IS THE ULTIMATE GOAL

The undersigned attorney does not conceal the fact that the ultimate goal is to allow motions for summary judgment (MSJ) in juvenile matters.

Interestingly, New York State allows MSJ in juvenile matters. The undersigned is reliably told that the procedure works very well, and he believes New York judges would so attest.

In Connecticut, a clearly deficient criminal proceeding may be defeated by a motion to dismiss. A clear-cut civil proceeding may be speeded-up by a motion for summary judgment. These procedures can save thousands of dollars and months of time in litigation costs.

---

[1] Fortunately, not all Juvenile Court lawyers do this, but enough do. The practice of filing a motion without reciting supporting facts was prohibited in the undersigned's former office, before his semi-retirement, as a certain ground for dismissal.

Yet there is no way to use MSJ in a clearly deficient juvenile petition. As a result, some parents can and are bankrupted into submission, when there was nothing there in the first place.

The reason that the undersigned is asking for fact pleading is to provide an easier path for the later request for MSJ.

MSJ EXAMPLE

Exhibit D, 3 pages, copy affixed hereto, is an edited version of a letter which the undersigned sent to the Rules Committed in 2015. It concerns the case of "Matthew H."

Hopefully, it demonstrates, once all for all time, why the summary judgment procedure is needed in juvenile court.

At that time, several judges pointed out that juvenile MSJ was not completely straightforward, and special rules would have to be worked out due to the nature of juvenile proceedings.

The undersigned agreed then, and agrees now. If fact pleading for juvenile matters, as outlined herein, is approved, then a detailed proposal to allow MSJ in juvenile matters will later be submitted, and available for all to review at leisure.

SUMMARY

It is impossible for the undersigned to imagine why fact pleading would not be required in all Connecticut cases. In juvenile matters, this is already done by the summary of facts in petitions that initiates a Juvenile Court case. There is not a reason under the sun to not require fact pleading for subsequent juvenile court motions, since such motions are prepared by attorneys, and not by DCF.

It is almost as impossible for the undersigned to understand why MSJ is not actively considered, under proper circumstances, in juvenile cases. The MSJ procedure will prevent DCF from filing a totally deficient or vindictive petition, such as Matthew H. above, which alleged harm to the children but offered no facts from which a Judge could possibly find neglect.

If the Rules Committee requests additional clarification, the undersigned is glad to oblige.

Finally, the Rules Committee may wonder why the undersigned, and not the DCF defense bar, is presenting this matter. The reason is that, with juvenile court reimbursement rates as they are, there is no organized DCF defense bar which has the time or interest in doing this work.

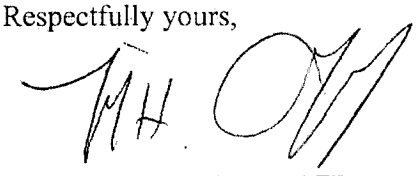
Connecticut has come a long way in enhancing the rights of parents. The *In Re Christina M.* decision, 280 Conn. 474, 908 A. 2d 1073 (2006), gave parents standing to argue for the removal of court-appointed attorneys for their children who were either conflicted or were not properly representing the children. This decision, in the opinion of the undersigned, ranks with such great U.S. Supreme Court decisions as *Stanley v. Illinois* (1972), holding that a parent could not lose parental rights simply because the child was born out of wedlock; and *Santosky v. Kramer* (1982), holding that parental rights could not be terminated on a standard of preponderance of the evidence, but required at least clear and convincing evidence.

The undersigned urges the Rules Committee to seriously consider requiring fact pleading in juvenile matters. This furthers parents' rights, and will no harm a single child.

It will help to level the playing field, which today in heavily skewed in favor of DCF in juvenile litigation.

Inconvenience to DCF should not be a reason to deny this, since DCF is a party, just like the parents; it is not the Judge.

Respectfully yours,



MICHAEL H. AGRANOFF

Encl.

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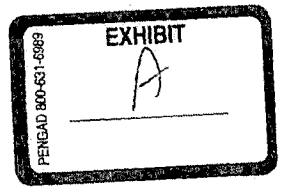



**DOCKET NO:** [redacted] : **SUPERIOR COURT FOR**

**IN RE:** [redacted] : **JUVENILE MATTERS**

: **AT ROCKVILLE**

: **MAY 17, 2018**

## MOTION FOR GUARDIAN ad LITEM

Pursuant to Connecticut Practice Book § 32a-1, et seq , the Respondent Father, [redacted] through his attorney hereby respectfully Moves this Honorable Court to grant his Motion to Appoint a Guardian ad Litem for the benefit of his minor children, [redacted] The Respondent offe the following in support of his Motion:

1. That, the minor children are currently represented by Attorney [redacted]
2. That, the Respondent Father is of the opinion that the minor children's best interests would best be served by an independent Guardian ad Litem.

**WHEREFORE**, for all of the foregoing reasons and more to be elicited through testimony if necessary, the Respondent Father respectfully Moves this Honorable Court to grant his Motion to Appoint a Guardian ad Litem for the benefit of the minor children.

**ORAL ARGUMENT MAY BE REQ.**
**TESTIMONY MAY BE REQ.**

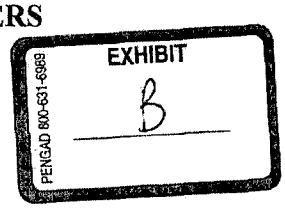
[redacted]

DOCKET NO: [redacted] : SUPERIOR COURT FOR

IN RE: [redacted] : JUVENILE MATTERS

: AT ROCKVILLE

: AUGUST 14, 2018




**MOTION FOR REMOVAL OF ATTORNEY FOR MINOR CHILDREN AND APPOINTMENT OF A SUCCESSOR ATTORNEY**

The Respondent Father, [redacted] through his attorney hereby respectfully Moves this Honorable Court to Grant his Motion to Remove the current Attorney for the Minor Children and Appoint a Successor Attorney for the Minor Children for good cause to be shown. The Respondent Father offers the following in support of his Motion:

1. That, the Attorney for the minor children was appointed for the minor children at the inception this matter in April 2017.

2. That, a Guardian ad Litem was recently appointed to opine on the best interests of the minor children.

3. That, for good cause to be shown, circumstances exist that necessitates the appointment of a Successor Attorney for the Minor Children.

4. That, upon information and belief the present Attorney for the Minor Children has a conflict of interest that interferes with the duties to be carried out as attorney for the minor children in this case.

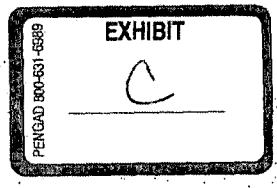
**ORAL ARGUMENT MAY BE REQ.**
**TESTIMONY MAY BE REQ.**

[redacted]

**WHEREFORE**, for all of the foregoing reasons and good cause to be shown, the Respondent Father respectfully Moves this Honorable Court to grant his motion to remove the current Attorney for the Minor Children and to appoint a Successor Attorney for the Minor Children in this matter.

By

[redacted]




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**

[redacted]

[redacted]

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.

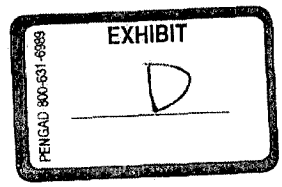
WHEREFORE, the Petitioner respectfully urges this Court to terminate the intervenors status of the Intervenors [redacted] and to rule on the motion before, during or at the conclusion of the hearing to be held on March 21, 2018.

THE PETITIONER,

JOETTE KATZ
COMMISSIONER
DEPARTMENT OF CHILDREN & FAMILIES

GEORGE JEPSEN
ATTORNEY GENERAL

BY: [redacted]




**THE CASE OF MATTHEW H.**

What made it clear to me that we need MSJ was the case of Matthew H. Following is the development of the case:

1. Matthew, one of four children in a proper middle-class household, was disciplined by his father for being extremely disrespectful one day. His father paddled him on the buttocks, but Matthew tried to block the paddle with his hand, and thus sustained a bruise on his wrist.

2. A teacher saw the bruise the next day. DCF was called, and an investigation was properly begun.

3. The DCF investigator was lazy. She disregarded the *Lovan C.* decision, which allows reasonable physical discipline. She failed to investigate the family dynamics, the school records, the pediatrician, or the family itself. As a result, she substantiated the father for physical neglect of Matthew.

4. The father called me. We filed an appeal of the substantiation. The substantiation was reversed easily after a hearing[1]. DCF simply had no case. I am pleased to note that the family is doing quite well, and all the children are law-abiding and productive citizens.

5. However, **while the substantiation appeal was pending,** the DCF treatment social worker insisted that the family undergo certain services, such as family counseling and parenting education. The family objected, on the grounds that this was not needed, and in any event the substantiation was being appealed. If they lost, they would of course accept the services.

6. DCF retaliated against the family by **filing neglect petitions involving both parents and all four children.** It was hard to understand, let alone explain to my client, how this could happen in the United States.

7. I tried everything that I could to get DCF to withdraw the petition. **Even the children's lawyer was on our side.** However, DCF would not budge.

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[1] The DCF Hearing Officer, a good friend and a down-to-earth person, told me privately, after the hearing, that he had seldom seen such a pointless substantiation filed by DCF.

8. Since there was no MSJ allowed under the Rules, I filed a motion to dismiss. The Judge was sympathetic, but denied the motion. The Judge stated, correctly, that the allegations of the petition, if proven, *could* support an adjudication of neglect. And indeed they could, except that the available evidence easily showed that the allegations could not be proven. **Nevertheless, no evidence could be presented at a motion to dismiss, and we would have to go to trial,** since DCF was unwilling to dismiss the petitions voluntarily.

9. At this point, the parents had had enough. Already drained by the substantiation appeal, they lacked the money and energy for several more months of this process. They pled nolo, and all four children were adjudicated neglected.

10. The court ordered six months of protective supervision. Three months later, we came back to court for an in-court review. I asked that protective supervision end early, then and there. The children's lawyer supported our position. Among the evidentiary claims that the Judge heard was this: during the protective supervision, the parents had gone to two sessions of family counseling. The counselor had told them to not come back, as there was no reason for the sessions.

11. DCF, however, through the AAG, argued that protective supervision should continue for the three more months as scheduled. The Judge, after hearing the evidence and reviewing documents, summarily ended protective supervision that very day; without bothering to dignify DCF's plea with a detailed response. Fortunately, DCF did not waste yet more taxpayer money by appealing that decision. The Judge's decision, in effect, amounted to summary judgment somewhat after the fact.

It is easy to make light of Matthew H., since there was no serious danger of child removal. However, it was not light to the family, which was humiliated and nearly bankrupted by a totally unjustified and arbitrary DCF action that had no basis in common law, fact, or common sense. An early MSJ would have allowed the petitions to be dismissed early. Time and money would have been saved, and the parents would not have been stigmatized with adjudications of neglect regarding their children.

I have had many cases in which a petition was filed simply because the parents were not properly deferential to DCF. DCF then files a petition, primarily to compel cooperation, and spends months on a fishing expedition to develop evidence. Again, it justifies this on "child protection" grounds; but if it had evidence that the child was in imminent danger, it could and would seize the child on a 96-hour-hold, and file for an OTC.

The extent to which some lawyers take advantage of the failure to require fact pleading can be almost comical. I have personally seen many examples of pleadings, some filed by DCF, some by the child's lawyer, that were so vague that defense to them was impossible. Any Juvenile Court Judge will attest to this.

mha.LOB.rules.juv.msj.matthew

**Del Ciampo, Joseph**

**From:** DUGGAN, MAUREEN <MAUREEN.DUGGAN@ct.gov>
**Sent:** Thursday, September 27, 2018 11:23 AM
**To:** Del Ciampo, Joseph
**Subject:** RE: Referral from the Rules Committee

**Follow Up Flag:** Follow up
**Flag Status:** Flagged

Thank you for the opportunity to comment on the proposed amendment. The Department of Children and Families does not support the proposed amendment to Practice Book Sec. 34a-1(b) to add a requirement of fact pleading to juvenile court pleadings. In the Department's view, this amendment is unnecessary as the Practice Book already requires that the petition set forth the allegations with reasonable particularity and that the petition be accompanied by a Summary of Facts to support the petition. Practice Book Sec. 33a-1.

The Department would also note that the motions attached in support of the request for amendment do not address the issue of fact pleadings and instead address claims of failure to follow procedure concerning intervention in juvenile court proceedings. The attachments indicate, however, that the motions properly referenced the existing applicable practice book sections concerning request to reargue and termination of intervention status. See Practice Book Secs. 34a-11, 11-12 and 35a-4(f).

Maureen Duggan
Legal Director
Department of Children and Families
505 Hudson Street
Hartford CT
Phone: (860) 560-5056
Facsimile: (860) 560-5001



**From:** Del Ciampo, Joseph [mailto:Joseph.DelCiampo@jud.ct.gov]
**Sent:** Friday, September 07, 2018 6:01 PM
**To:** DUGGAN, MAUREEN <MAUREEN.DUGGAN@ct.gov>
**Subject:** Referral from the Rules Committee

Dear Attorney Duggan,

Attached is a referral to DCF from the Rules Committee. Please contact me with any comments. Thank you.

Joseph J. Del Ciampo
Director of Legal Services

Connecticut Judicial Branch
100 Washington Street, 3rd Floor
Hartford, CT 06106

e-mail: Joseph.DelCiampo@jud.ct.gov

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