

# Legal Lines

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## **PRESIDENT'S MESSAGE** **by Terry J. McLaughlin**

Let me begin by sending my best wishes that everyone and their families are healthy and safe, and remain that way. I also want to thank everyone that has suggested, planned, presented or participated in one of our virtual events so far. They have been a great success and very well attended.

The Committee for Anti-Racism and Equality (CARE) Co-Chairs, Adrian Angus and Courtney Mayo, have chosen their subgroups and subgroup leadership teams. I am happy to announce that the subgroups will be Community Outreach and Education and Awareness. The leaders of the Community Outreach subgroup will be Jonathan Mannina and Dolores Thibault-Munoz, and the leaders of the Education and Awareness subgroup will be Weayonnoh Nelson-Davies, Areille Sharma and Rubby Wuabu.

The CARE Committee subgroup on Education and Awareness is already off to a great start, inviting all of our members to take part in a "21-Day Racial Equity Habit-Building Challenge" which will begin in November. There is more detailed information attached to this issue of Legal Lines, including the start date and materials. I encourage all of you to review the materials and consider joining us in this important activity.

We have been and will continue to provide regular updates from the Courts. Thank you to the Probate Court co-chairs Kathryn Calo and Kathleen Brown, and the Housing Court co-chairs Monica Passeno and John Goggins, for multiple updates from Probate Court and Housing Court. Thank you to Kanchana Fernando and Maryanne Reynolds for a recent Juvenile Court update.

On November 5th, there will be a Superior Court Best Practices seminar. My thanks to Ryan Avery, Catherine Brennan and Cheryl Riddle for planning that event. The Honorable Judge Daniel Wrenn and the Honorable Judge William Ritter will be the panelists, and Attorneys Kathryn O'Leary and Anthony Salerno will moderate.

Thanks to Judge Timothy Hillman and Attorney Leonardo Angiulo, co-chairs of the Federal District Court Committee, our First Monday series returned in October. The next First Monday series topic will be Closing Arguments, on November 2nd from 1 to 2 pm. There will be a very experienced group of judges and practitioners presenting, including Judge David Hennessey, Judge Daniel Wrenn, and Attorneys Michael Angelini, John Martin and Jeffrey Raphaelson. The event will be hosted by Jared Fiore and Courtney Mayo. Please participate if you have the chance. These are meaningful programs that pack a lot of useful information into a short period of time.

Our Young Lawyers Section, led by Paige Barton and Liz Halloran, planned and held our first Young Lawyers event of the year, musical bingo. It was well attended and very successful. They will be planning more events for the fall.

Our new website is expected to be ready soon and should launch in November. Please be patient during the first weeks of the launch. Unless you enjoy being yelled at, I would also advise not calling the main office for a few days after the launch, since Sandra and Candice will be the ones working through the glitches! Seriously though, I thank you in advance for your patience while we navigate this change.

We are still operating very much as a virtual association at this time and will continue to do so until it is safe. That being said, we have started to plan next year's legislative breakfast, Law Day and annual dinner. We hope that those events, and so many others that we have all been missing, will be held in person.

As I have asked before and will continue to ask, please reach out, please be active and please get involved. I believe that the progress we have already made shows that as predicted, we will weather the current crisis together, and emerge a stronger association and Bar.

**WCBA Bench Bar Committee: Juvenile Court Division**  
**Case Summary: Adoption of West, 97 Mass. App. Ct. 238 (2020)**  
**by Kevin J. Powers<sup>1</sup>**

I. Issue

Under G.L. c. 119, will an appellate court reverse a termination of parental rights based upon a claim that DCF failed to make reasonable efforts to reunify, where a party first raises that claim on appeal and where that claim was not a theme of the case? If not, then when should a parent raise such a claim?

II. Procedural History

During the litigation of a care and protection matter, DCF provided the Mother with referrals for services. The Juvenile Court terminated the Mother's parental rights. On appeal, the Mother argued that DCF failed to refer her to Spanish-speaking service providers. Mother argued that she timely raised her claim of inadequate services by discussing it with DCF's psychological evaluator, by raising it in her proposed findings of fact and conclusions of law, and by making it a "theme that ran through the case."

III. Rule of Law and Policy

Rule. A parent cannot raise a claim of inadequate services for the first time on appeal. "[A] parent must raise a claim of inadequate services in a timely manner." Adoption of Daisy, 77 Mass. App. Ct. 768, 781 (2010). The parent should assert the claim "either when the parenting plan is adopted, when [s]he receives those services, or shortly thereafter." Adoption of Gregory, 434 Mass. 117, 124 (2011).

Policy. Raising the issue at an early stage in the proceedings allows DCF to remedy the inadequate services, which in turn fosters a greater chance of family reunification. DCF would not have the opportunity to address a claim of inadequate services raised for the first time on appeal.

IV. Reasoning

Justice Massing, writing for the Court and reviewing the decision of the trial judge for clear error, observed that the Mother confided to DCF's psychological evaluator that she was having difficulty finding Spanish-speaking therapists in her vicinity, but there was no record evidence that DCF's psychological evaluator or the Mother conveyed this information to DCF.

The Mother did not raise the issue of inadequate services at trial. The Mother argued that she raised the issue in proposed findings of fact and rulings of law, but the Court held that she did not do so.

The Court held that the record belied the Mother's claim: DCF more than reasonably accommodated the Mother's needs by providing her with a Spanish-speaking social worker, writing service plans in Spanish and English, having her evaluated by a Spanish-speaking psychologist, and referring her to Spanish-speaking therapists. "[H]eroic or extraordinary measures, however desirable they may at least abstractly be, are not required." Adoption of Lenore, 55 Mass. App. Ct. 275, 278 (2020).

V. Holding

The failure to provide services in Spanish was neither a theme of the case nor supported by the record. On appeal, the Mother failed to show that the judge's finding of reasonable efforts was clearly erroneous.

VI. Disposition

The Appeals Court affirmed the termination of the Mother's parental rights.

VII. Practitioner Guidance

Noting that a parent has many avenues available to raise a claim of inadequate services, the Court clearly articulated several avenues through which parents may raise a claim of inadequate services.

- A parent may request an administrative fair hearing or reject the service plan and file a grievance.
- A parent may file an abuse of discretion motion.
- A parent may raise the claim prior to trial, *i.e.*, during a pre-trial conference.

The Court further warned that, although addressing an issue in proposed findings and rulings is usually a good indication that the issue was raised at trial, it is not an acceptable avenue for raising an issue that was never addressed at trial.

Trial counsel for a parent in any care and protection matter should heed the Court's warning and take every opportunity to raise the issue both prior to trial and during trial, in order both to zealously advocate for the interests of the client and to preserve any claim of error in anticipation of a potential appeal.

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<sup>1</sup> The author handles appeals and complex trial motions for busy trial lawyers who love going into court but who lack the time to decamp to a law library. He can be reached at [kpowers@kevinpowerslaw.com](mailto:kpowers@kevinpowerslaw.com).