

99 Stafford Road (Rt. 30)  
Ellington, Connecticut 06029

*Law Offices of*  
**Michael H. Agranoff**

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

Michael H. Agranoff, Esq.  
*AttyMikeA@AgranoffLaw.com*  
Jessica Audet, Esq.  
*Jessica@AgranoffLaw.com*

*www.AgranoffLaw.com*

Audrey B. Staropoli, Esq.  
*Audrey@AgranoffLaw.com*  
Karen Thibodeau, Paralegal  
*Karen@AgranoffLaw.com*

CONNECTICUT GENERAL ASSEMBLY

January Session, 2009

Raised Bill No. 6404

Referred to Committee on Judiciary

**An Act Concerning Indemnification and Immunity for Certain Child Protection Attorneys  
and Guardians Ad Litem**

REMARKS OF ATTY. MICHAEL H. AGRANOFF

Thank you for the opportunity to testify. I have been a DCF defense lawyer since 1991. At present, ours is the only law firm in the State of Connecticut devoted to full-service DCF defense for private-paying adults on a full-time basis.

I totally disagree with passage of Raised Bill No. 6404. I believe that this law would be a total disaster for parents involved in the DCF system, as it would remove any opportunity that most parents have to take action against incompetent representation. The reasons are more fully detailed in a letter that I sent to the Attorney General dated Jan. 26, 2009. A slightly redacted copy of that letter is attached hereto.

*Practice Concentrated in DCF Defense Law*

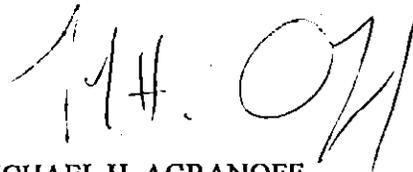
The one and only solid argument in support of this bill is that special public defenders already have limited liability. This avoids mentioning the fact that criminal defendants already have Constitutional protections and habeas corpus available to them. Parents in this DCF system, which is considered a civil matter, have no such protections. The indigent ones are entirely dependent upon underpaid court-appointed lawyers; and this bill would remove any protections that they have against those lawyers.

Atty. Signorelli will argue that this bill will make it easier for her to recruit lawyers into her system. There is no evidence that that is true, but plenty of evidence that innocent parents would be injured thereby.

Therefore, I urge defeat of this bill. It would be a Constitutional disaster for Connecticut parents.

I will be glad to answer any detailed questions on this bill and its implications. EM:  
AttyMikeA@agranofflaw.com.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "M.H. O'H", written in a cursive style.

MICHAEL H. AGRANOFF

Attorney At Law

Attachment

mha.LOB.testimony.CCPA.immunity

99 Stafford Road (Rt. 30)  
Ellington, Connecticut 06029

*Law Offices of*  
**Michael H. Agranoff**

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

Michael H. Agranoff, Esq.  
*AttyMikeA@AgranoffLaw.com*  
Jessica Audet, Esq.  
*Jessica@AgranoffLaw.com*

*www.AgranoffLaw.com*

Audrey B. Staropoli, Esq.  
*Audrey@AgranoffLaw.com*  
Karen Thibodeau, Paralegal  
*Karen@AgranoffLaw.com*

January 26, 2009

Hon. Richard Blumenthal  
Attorney General  
55 Elm Street  
Hartford, CT 06106

Re: Limited Liability for Juvenile Court-Appointed Lawyers

Dear Atty. General Blumenthal:

In the 2008 session, Atty. Signorelli proposed a bill that would limit legal malpractice liability for Juvenile Court-appointed lawyers. It would put them on the same protective footing as special public defenders. The bill would allow for lawsuits in cases of wanton, reckless or malicious conduct.

The bill was defeated. There is no doubt that it will arise again and again.

There is further no doubt in my mind that, if it passes, the familiar slippery slope will come into play. The next bill will be for total immunity.

In my view, such a bill would be a complete disaster, and would further erode the woefully limited protections that adult clients of DCF already have. It would complete the total control of the State in DCF matters.

On Nov. 13, 2008, I sent a letter to this effect to Atty. Signorelli. A copy is attached hereto.

There followed a series of EM's between Atty. Signorelli and myself. The gist was this:

1. Atty. Signorelli wanted to me give evidence against the lawyer who mishandled the case in my letter. I declined to do so. There are numerous other such cases, and I am not going to become a permanent unpaid grievant in her attempts at control. I would be more inclined to do so, however, if her mandatory training of court-appointed lawyers did not include sending lawyers, at taxpayer expense, to hear socialists talk about U.N.-mandated solutions to the problem of child abuse and neglect, in words of incomprehensible psychobabble.

*Practice Concentrated in DCF Defense Law*

2. Even a standard of wanton, reckless or malicious conduct would be nearly impossible to prove in practice. It is very difficult to find qualified DCF defense lawyers, let alone ones who would be willing to testify against other lawyers as expert witnesses; not to mention finding a lawyer to take the case. Even if all this were overcome, the Judges would clearly favor state-paid contractors. Thus, the standard proposed by Atty. Signorelli is virtually unworkable; even if she never tried to change it to absolute immunity.

3. I specifically and repeatedly asked Atty. Signorelli to draft a reasonable bill which I could support. I repeated that I was willing to work with her on it. She has pointedly, and in my opinion unreasonably, refused to respond.

4. Atty. Signorelli repeated that I am trying to make it harder for the already-underpaid Court-appointed lawyers to do their job. I adamantly deny that, although I agree that it is arguable. I was a court-appointed lawyer myself for many years, and I and my staff continue to work well with many of those lawyers today. That is another reason for getting together and trying to draft a reasonable bill.

It is easy for this debate to degenerate into the personal level. I believe that Atty. Signorelli, bright as she is, is a consummate empire-builder. She thinks that I am trying to set up a legal malpractice office. However, lost in any such personal attacks are the rights of families, which are already in extreme jeopardy.

I repeat: read my web site if you are in doubt. The stories are real, with only names changed.

Two things are needed to improve the quantity and quality of Court-appointed lawyers:

1. Better pay. I fully support this, as I did in 2001, when I wrote a paper as part of Judge Ronan's task force; a paper that was totally ignored by Judicial. However, one barrier to better pay is the bureaucracy and out-of-state training expense already in place. That would be better spent on allowing reasonable expenses for court-appointed lawyers in their defense.

2. Better training. I believe that my "DCF Defense Protocol", which is advertised on my web site as free to all lawyers who request it by EM, is a far better start than classes taught by Martha Stone and other academics. At least virtually every other lawyer who has come to me for help has said so. CCA and others, however, can provide training on certain specific matters.

The bottom line is this: The limited immunity of special public defenders, which I believe is a disgrace, should not be grafted onto Juvenile Court-appointed lawyers. It would take a bad situation and make it worse for the clients. And it would not help the lawyers, who already have virtual immunity.

We already have a bad situation. There is no reason to make it worse.

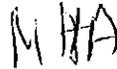
*Practice Concentrated in DCF Defense Law*

This situation is not a mystery. Liability protection is the name of the game in America today. That's why all big corporations hire expensive lobbyists and lawyers: to shield themselves from accountability. The United States has come a long way since Justice Brandeis said, "Accountability – that is government."

We should not go any further.

Thank you for your kind attention to this matter.

Respectfully yours,



MICHAEL H. AGRANOFF

Attach.

cc: Susan I. Hamilton, Esq., DCF Commissioner, 505 Hudson St., Hartford, CT 06106

Carolyn Signorelli, Esq., Chief Child Protection Atty., 330 Main St., 2<sup>nd</sup> fl., Hartford, CT 06106

Deborah Stevenson, Esq., P.O. Box 704, Southbury, CT 06488

mha.AG.ltd.liab.1

*Practice Concentrated in DCF Defense Law*

99 Stafford Road (Rt. 30)  
Ellington, Connecticut 06029

Law Offices of  
**Michael H. Agranoff**

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

Michael H. Agranoff, Esq.  
*AttyMikeA@AgranoffLaw.com*  
Jessica Audet, Esq.  
*Jessica@AgranoffLaw.com*

*www.AgranoffLaw.com*

Audrey B. Staropoli, Esq.  
*Audrey@AgranoffLaw.com*  
Karen Thibodeau, Paralegal  
*Karen@AgranoffLaw.com*

November 13, 2008

Carolyn Signorelli, Esq.  
Chief Child Protection Attorney  
330 Main St., 2<sup>nd</sup> fl.  
Hartford, CT 06106

Re: Liability for State-Paid Lawyers

Dear Atty. Signorelli:

I wish to advise you of a case that I am currently working on.

The parents had been accused of causing failure to thrive for their young children. The parents were both represented by court-appointed lawyers.

At the hearing on commitment, DCF called a physician who regularly contracts with the State to examine abused and neglected children. That physician testified under oath that there was failure to thrive, and that the parents were likely the cause. She also submitted a report, which was admitted into evidence.

The children's pediatrician also testified.

The court found that failure to thrive was established, and that it was likely caused by the parents. There was no finding that this was established "to a reasonable degree of medical probability", but it was used as one part of the commitment decision.

About a year later, the parents had another child. That baby was taken from the hospital on an OTC when she was four days old. The grounds were predictive neglect, based upon the prior commitment. There was no allegation of poor prenatal care, or domestic violence, or substance abuse between the parents at present. In short, a rather strange OTC.

The father contacted me, and I represented him privately in contesting the OTC. The mother had a very good court-appointed lawyer, not the same as her prior lawyer.

Shortly after starting the case, I noted the absence of the pediatrician's records. I had the State physician's letter and her conclusions, but not the records of the pediatrician. I got a release, got these records, and examined them.

This pediatrician had been the pediatrician for both kids since their birth and until their removal. In fact, he saw them for some time after removal, until the foster mom got a different doctor.

When I read the records, I almost fainted. He had not one mention of a serious problem. In fact, for each kid, on the last visit of each kid prior to removal, the records were overwhelmingly positive.

The pediatrician did mention "failure to thrive" in his records for one of the kids, but only after the kid had been removed, and the State doctor had "spoken" to him.

The intimidation that DCF visits upon providers these days is too obvious for comment.

Since failure to thrive was listed as a reason for the OTC on the baby, I asked the mother why the pediatrician's records had not been introduced into evidence. Her response astounded me: her lawyer failed to do so!

I offered that perhaps that lawyer had been unable to get the records. But no, the mother had gotten them from the pediatrician on her own.

I offered that perhaps the mother gave the lawyer the records too late, and she could not make copies. But no, the mother had taken the trouble to make copies and give them to the lawyer. The lawyer simply refused to introduce them.

This, of course, is the same lawyer who subpoenaed the pediatrician to testify. She could not also issue a subpoena duces tecum for the records.

And that was the good part!

When I tried to introduce the pediatrician's records at the OTC trial, due to the predictive neglect that was based in part on failure to thrive, the Judge disallowed them. He said that I was collaterally estopped by virtue of the prior court finding.

I argued that the prior finding did not include a firm finding to a reasonable degree of medical probability, but it was unavailing. The Judge said that the issue had been raised, and that was that.

I argued that these parents should not lose a baby due to the neglect of mother's prior lawyer. But as the AAG noted, that prior lawyer was admitted to practice, and no grievance had been filed. The Judge was unmoved.

So, we lost the OTC hearing. Now we are trying to get the commitment revoked. Maybe we will succeed; maybe not.

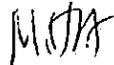
It is strange. If you are sentenced to death, it may be reversed, before execution, via habeas. But there is no habeas, and no defense of actual innocence, in a Juvenile Court proceeding based upon bad lawyering.

I mention this case to you, lest you are planning to renew legislation to exempt court-appointed lawyers from liability. And "gross negligence" caveats, as we both know, will not help.

Please. The public is little-enough protected from DCF as it is.

Thank you.

Very truly yours,



MICHAEL H. AGRANOFF

mha.signorelli.ltr.liability