

Dear Friends and Clients of the Family Defense Center:

June 11, 2014, was a wonderful day for the Family Defense Center and for tens of thousands of parents and caregivers in Illinois. There were no parades, but there should have been. That is because on June 11, 2014, a lawful rule finally went into effect that stops DCFS from claiming innocent parents—including those who are victims of domestic violence themselves or have mental health conditions they are treating—are guilty of child neglect. Indeed now, for the first time, DCFS rules proclaim that being a victim of domestic violence is presumptively NOT child neglect. In order to determine that any person has created an “environment injurious,” DCFS rules now require a more stringent showing that a parent or caregiver “blatantly disregarded” their duty of care towards the child by failing to exercise “reasonable precautionary measures.” While this rule affects tens of thousands of Illinois families each year, the impact is especially significant for persons with mental health diagnoses, families with a family member with a substance abuse issue (including persons in recovery), and mothers who are domestic violence victims, for these are the individuals who so commonly were brought into the wide DCFS net under the old rule defining “environment injurious” in a matter that operated as an unlawful “catch all.” (Please see Issue 15 and Issue 16 of *The Family Defender* for additional details on the Julie Q. and Ashley M. cases summarized here).

The rule that DCFS adopted is one the Family Defense Center had fought for long and hard. In fact, the fight to secure exoneration for family members who were wrongly labeled child neglectors for creating a supposed “environment injurious” just because of who they are—and not because of anything neglectful they had done—started way back in April 2009, when a mother named Julie Q. sought our help. To us, it was clear that Julie had been unfairly targeted for child neglect when there was no case against her at all, just a lot of innuendo coming from an embittered ex-spouse.

At the time that Julie Q. came to our offices, we at the Family Defense Center were already aware of the groundwork that had been done at the Legal Assistance Foundation on the critical legal issue that would be the centerpiece of our eventual success in Julie’s case. This work started in a case involving a victim of domestic violence whom we had referred to LAF due to our own limited resources at the time. In the course of representing the mother, whose sole fault was that she threw broccoli at her husband in the middle of violent assault on her, attorney Sara Block, then a Skadden Fellow at LAF working on the intersection of child welfare and domestic violence, discovered that the now-infamous Allegation #60, which allows “environment injurious” allegations without any clear limits, was not authorized by the Illinois legislature. In fact, Sara’s research uncovered that in 1980 the General Assembly had deliberately removed the phrase “environment injurious” from the law. DCFS had then proceeded to promulgate Allegation 60 in 2001 without any legislative authority. In other words, Allegation 60 was and should be declared legally void from the start, or “void ab initio.”

After LAF won the “thrown broccoli” case at the circuit court level, we started making the same argument in our cases: that Allegation 60 is void as a matter of law. And as I often say to our staff, sometimes you just have to lose your cases in order to have a bigger victory later. That’s what happened to Julie Q. She lost two rounds of appeals, despite excellent work by Ajay Athavale and Darren Fish at her initial hearing, and despite excellent work by Liz Butler on administrative review, all with supervision and support from FDC staff attorney Melissa Staas and me.

When Julie Q. lost her administrative review case at the circuit court level, we thought the case was an excellent one for further appeal to the state Appellate Court. For this effort, we tapped now-judge Michael Otto, who had become interested in the Allegation 60 voidness argument while successfully handling an earlier Allegation 60 case through our pro bono program, and his firm Jenner & Block to help brief the case and argue it. This time we won, and it was DCFS that was unhappy with the Appellate Court's decision. DCFS asked the Illinois Supreme Court to hear the case. Meanwhile, Julie stayed registered as a child neglecter, a grossly unfair label given that the only basis for claiming she had neglected her daughter was that she was in recovery from alcoholism. Under the overbroad language of Allegation 60, any parent with any problem at all—even one in their distant past—could be swept into the child abuse register just as Julie was. As we realized the unfairness of this process, we made our work to get rid of Allegation 60 once and for all the centerpiece of our Mother's Defense Project. That project focuses on policies and practices that disproportionately affect mothers for reasons that are gender-biased.

After the Appellate Court ruling, and while the case was still pending in the Illinois Supreme Court, DCFS made efforts to secure some legislative authority to keep investigating and indicating parents broadly for creating an injurious environment under the same vague definitions found in Allegation 60. When we got wind of the DCFS legislative proposal, however, we and a coalition of allies talked to the sponsor, Sen. Michael Haine, about the Appellate Court's ruling and the reasons for concern about the overbreadth of the Rule. Ultimately, DCFS and the Public Guardian agreed to put narrowing language requiring a real showing of likelihood of harm as well as blatant disregard of a parent's duty of care to the child into the statute so that only parents who truly neglect their children would be swept into the child abuse register. On July 13, 2012, the new law went into effect, thereby authorizing DCFS to promulgate rules consistent with the new statutory language.

It took until March 21, 2013—a date we will start to celebrate as “Julie Q. victory day”—for the case to be finally decided by the Illinois Supreme Court. The Court affirmed that that Allegation 60 was void. As a result of this clear decision, DCFS was compelled to send letters to the 19,000 Illinois parents and guardians having registered indicated findings for Allegation 60 telling them that the indicated findings were being removed from the State Central Register.

Despite being told by the Appellate Court and the Supreme Court that Allegation 60 was void and despite the Illinois General Assembly implementing a new standard for “environment injurious” that differed substantively from the void Allegation 60, DCFS took no steps to promulgate a new rule. Despite the numerous attempts we made to discuss with DCFS's attorneys the clear need for a new rule, DCFS continued to indicate people under the old void Allegation 60—flagrantly disregarding the directives given by the judiciary and legislative branches—and spurned our efforts to collaborate. Continued litigation was the only remaining option, so on September 3, 2013, we filed the class action lawsuit *Ashley M. v. DCFS*, with the same outstanding team of attorneys from Jenner & Block who had so deftly handled the Supreme Court briefing and argument, Michael Brody and Precious Jacobs, continuing to take the lead. Still, DCFS refused to expunge the indicated findings for Allegation 60 made after July 13, 2012, the date of the legislation narrowing the grounds DCFS could use for indicating findings of an “environment injurious.”

To be fair to DCFS, four directors were in place from the end of November 2013 through April, 2014, so I'm speculating that it may have been hard for DCFS to make decisions responding to the new class

action lawsuit. Still, it is hard to understand why DCFS didn't simply put a new rule on the books in July 2012 that responded to the legislation, or in March 2013 that responded to the Illinois Supreme Court ruling, or in September 2013 that responded to the new class action lawsuit.

After the Illinois Supreme Court ruled, we brought Sara Block, the lawyer who had been the first person to discover that Allegation 60 had no legislative authorization, onto our staff as a Flom Incubator Grant recipient. After the Ashley M. suit was filed, it was Sara who assumed the challenging work of drafting proposed rules and procedures that would be used to implement the correct legal standard. Sara's policy proposal was used as the eventual framework for the rule that DCFS finally promulgated.

On January 1, 2014, 18 months after the legislative change and almost a year after the Supreme Court decision, DCFS declared the matter an "emergency" and put a new rule into effect. But that rule expired before a final rule was adopted. And it took until May before we were asked for comments on the final rule that the Joint Commission on Administrative Rules was reviewing for final revisions and posting.

On June 11, 2014, a momentous date for Illinois families, the new permanent rule implementing a lawful "environment injurious" allegation finally took effect. Parents like Julie Q., who was a joy to represent in the battle for justice that has helped to exonerate over 19,000 parents, deserve justice that does not take over five years to achieve. Justice delayed is justice denied. But finally we do have justice, and we have the many people who have worked on the Julie Q. and Ashley M. cases to thank, coupled with the dogged determination of our own outstanding staff who have shepherded this work to the conclusion.

The battle isn't over. DCFS has yet to expunge the cases of all the individuals indicated between the date of the legislative change and the date on which at least a new emergency rule was in effect. DCFS also has yet train its staff, to our knowledge, on the requirements of the new rule that was put into effect on June 11. We see many cases in which the old Allegation 60 language is getting used in practice. We see cases in which "inadequate supervision" is added to cases that had been brought as Allegation 60's previously—which looks to us like an end run around the Illinois Supreme Court's holding. Our work is cut out for us to keep fighting for standards in our neglect laws that target the parents who are truly abusive and neglectful and leave good parents alone. We are working hard at the Center to bring that day closer.

We do know that but for the Family Defense Center's determination and its ability to work with wonderful pro bono attorneys who did the lion's share of the work on Julie's and Ashley M.'s and the other plaintiffs' behalf, the June 11 rule would never have been adopted.

With gratitude for the hard work of dozens of people who came together to advocate for justice for families, over the span of 5 years, including the clients of the Center who were willing to fight for justice for themselves and for others like them,

Yours,

Diane L. Redleaf

Founder and Executive Director

The Family Defense Center