

**PRACTICE ADVISORY: Obtaining orders for posttermination and postadoption sibling visits**

**What's the rule?** Children who are in DCF's custody on a C&P and their parents may file a petition for an order for sibling visits.<sup>1,2</sup> The intent of the sibling visitation statute is to ensure that siblings who have been separated by State intervention have access to and visitation with one another.<sup>3</sup>

**What's the issue?** Some folks request orders for posttermination and postadoption sibling visitation as part of the trial, as they do with ongoing parent-child visitation. Such a request is committed to the trial court's discretion, and any order is based on the court's assessment of the children's best interests.<sup>4</sup> An appellate court will affirm an order that leaves postadoption sibling visits to the eventual adoptive parent's discretion if the trial court did not abuse its discretion in finding the order to be in the children's best interests.<sup>5</sup>

By contrast, where counsel files a petition for posttermination and postadoption sibling visitation for their client, the trial court must order a particular schedule of visits for the children if the court finds ongoing sibling visits would be reasonable, practicable, and in the best interests of each sibling.<sup>6</sup> A court that grants a petition for sibling visits may not leave sibling visitation to the discretion of DCF or an eventual adoptive parent.<sup>7</sup>

**What's the bottom line?** If you represent a child or parent who wants the court to make an order for posttermination or postadoption sibling visits, you should file a petition for sibling

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<sup>1</sup> G. L. c. 119, § 26B(b) (where siblings are in foster care or a parent's home or have been adopted); *Care and Protection of Jamison*, 467 Mass. 269 (2013) (where siblings are in a guardianship).

<sup>2</sup> If DCF denies sibling visitation for a child who is in DCF's care on a voluntary placement agreement or has been surrendered for adoption, the child or a sibling of the child may pursue a Fair Hearing and, if still dissatisfied, obtain a trial de novo in probate court. G. L. c. 119, § 26B(b).

<sup>3</sup> *Care and Protection of Jamison*, 467 Mass. at 278-279; see G. L. c. 119, § 26B(b).

<sup>4</sup> *Adoption of Flavia*, 104 Mass. App. Ct. 40, 55-56 (2024).

<sup>5</sup> See *Id.* at 56-57.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

visitation pursuant to G. L. c. 119, § 26B(b) and ask the court to consider it simultaneously with the trial.

***Is a model sibling visitation petition available?*** Yes. There is a model petition on My Gideon and on the L: Drive of each CAFL staff trial office. The model petition seeks a visitation order during a case but can be modified to request an order for posttermination or postadoption sibling visitation.

***What should I know about appeals?*** Regardless of when the petition is filed and decided, the denial of a sibling visitation petition is a final judgment and must be appealed in the same way as an appeal from an adjudication or TPR decree. If your client wants to appeal the denial of their petition after trial, you must include in the Notice of Appeal that they are appealing from the order denying the sibling visitation petition pursuant to G. L. c. 119, § 26B(d).<sup>8</sup>

***Thank you to the Children and Family Law Division at the Committee for Public Counsel for providing this practice advisory.***

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<sup>8</sup> If your client files a petition for sibling visitation during a case (i.e., one that seeks an order for visits while the case is ongoing) and is denied, you still follow the process that is required for an appeal from a final judgment. That is, you will file a Notice of Appeal within 30 days of the denial and the same motions you would file following a trial: a Motion for Appointment of Appellate Counsel and a Motion for Fees and Costs of Appeal. You will also complete the Appellate Assignment Intake Form and send it to the CAFL Appellate Panel Support Unit at [CAFLappeals@publiccounsel.net](mailto:CAFLappeals@publiccounsel.net). Everything trial counsel needs to know about initiating a final appeal, including model motions and forms, can be found on the website, [HERE](#). By statute, an appeal from a decision denying a sibling visitation petition proceeds as an appeal from a final judgment, regardless of when the petition is filed and decided. G. L. c. 119, § 26B(d).