

BROOKLYN DEFENDER SERVICES

FAMILY DEFENSE PRACTICE

177 LIVINGSTON STREET
BROOKLYN, NY 11201

TEL: (347) 592-2500

FAX: (718) 596-4704

Brooklyn Family Defense Practice (BFDP) Pro Bono Project

BFDP, an office of Brooklyn Defender Services, represents low-income parents in child welfare cases in Brooklyn Family Court. Funded by the City of New York, BFDP's mission is to provide high quality interdisciplinary legal representation that protects parents' due process rights while promoting access to services needed to build safe and stable families. Teams of attorneys, social workers, and parent advocates help families find solutions to concrete problems to avoid the unnecessary trauma of removing children from their families except when absolutely necessary.

BFDP represents more than half of all the Brooklyn respondents in child welfare cases—about 850 new cases each year. Since its inception in 2007, BFDP has represented more than 4,000 families in Brooklyn Family Court and has helped over 3,000 children return home safely, with over 1,000 children either returning or remaining with their families as a result of emergency hearings.

Family defense work is a civil rights practice. We advocate on behalf of the most disenfranchised families against unwarranted state interference. The vast majority of child welfare cases involve allegations related to the families' poverty. BFDP's clients face enormous barriers to keeping their families together because they lack resources to meet their children's basic needs. BFDP advocates for a fair system that ensures our clients' and their children's rights to due process and family integrity.

Pro Bono Cases: BFDP builds *pro bono* partnerships with law firms to maximize our ability to provide excellent legal representation to clients in a high volume practice. BFDP refers discrete assignments and provides extensive mentoring. Assignments range from 10 hours for a motion to dismiss or summary judgment, to 25-30 hours for a written post-trial summation or appeal, to more than 100 hours over an extended period of time to co-counsel a trial. Pro bono cases include:

Appeals in the Second Department: Law firms assist BFDP attorneys in filing and defending direct and interlocutory appeals involving complex state and federal statutory and regulatory schemes. Associates often do the oral argument. The law in the child welfare area is not well developed creating opportunities for each appeal to make a substantial legal impact.

Motions: Associates work on motions to dismiss, for summary judgment or to vacate findings. Associates can argue the motion in family court. BFDP refers discrete projects to firms and remains as the attorney of record. We co-counsel the case for the discrete project.

Trials: Associates can work on fact finding trials, including co-counseling the trial and helping with the whole trial or a discrete part of the trial, such as developing expert testimony and conducting direct or cross examining expert witnesses, and/or filing motions regarding expert qualifications or methodology.

BFDP's Associates Advisory Board: The board provides advice and guidance to BFDP's leadership on issues concerning communication, policy, and fundraising. Its work is crucial in expanding BFDP's capacity to raise funds, leverage pro bono resources, and increase BFDP's visibility in the community. Participation on the board gives associates an opportunity to contribute to BFDP's mission and develop invaluable leadership and organizational skills.

For more information, contact Lauren Shapiro, BFDP Attorney-in-Charge, at LShapiro@bfdp.bds.org

Pro Bono case examples:

Attorneys at David Polk filed a motion to dismiss a petition in a case alleging that our client failed to protect her children from domestic violence by the father. The motion resulted in the City withdrawing the neglect case against our client.

An attorney from Kelley Drye and Warren co-counseled a hearing challenging the City's removal of our client's children based on the claim that she was too intellectually limited to care for them. The litigation team secured a forensic psychologist who successfully challenged the evaluation on which ACS was relying and convinced the court that our client's children were experiencing psychological harm from their separation. After an emergency hearing lasting several months, both children were returned to their mother's care.

An attorney from Skadden, Arps, Meagher, & Flom drafted a written summation following a three month trial involving 11 witnesses (four expert) resulting in a dismissal in a Shaken Baby Syndrome case. BFDP's client, a young working mother trying to become a pharmacist, was accused of child abuse after her child was hospitalized for the second time following an initial hospitalization for Meningitis. The judge fully credited the explanation of BFDP's pediatric neurologist that the child's symptoms were consistent with meningitis. The attorney drafted the brief in opposition to ACS's appeal of the decision and argued the appeal. The decision was upheld by the Second Department.

Attorneys from WilmerHale co-counseled a Termination of Parental Rights trial with BFDP on behalf of a mother with developmental disabilities who along with the father is caring for the children's younger siblings. The pro bono attorneys conducted depositions, filed a motion to dismiss the portion of the petition based on allegations of mental illness and mental retardation, argued preliminary motions, attended court conferences, and interviewed relevant witnesses, including experts. As a result of these efforts, the TPR was withdrawn by the agency.

Attorneys from Kaye Scholer worked on a motion for summary judgment to dismiss an abuse case following an emergency hearing in which the Judge found based on the medical testimony that the child's injury was caused by an accident. The motion was unopposed and the Judge dismissed the case against our client in full.

An attorney from Ropes and Gray worked on a model motion seeking permission from the court to allow respondents to leave the jurisdiction with their children during the pendency of a case including complicated interstate compact laws. The motion was later relied on by attorneys from Davis Polk who worked on a motion for a client who is homeless so she could move with her children to New Jersey where she has family support.

Attorneys at Proskauer Rose filed a brief in support of BFDP's appeal of a Family Court Judge's refusal to hear our client's motion for a suspended judgment which would enable her to seek a vacatur of the finding of neglect based on rehabilitation. (These are very important for our clients because it allows them to try to get their record amended so it won't affect their future employment.) BFDP won the appeal and Proskauer represented our client at a hearing before the Family Court judge resulting in a decision vacating the finding of neglect.

An attorney from Skadden filed a pre-trial motion in a contempt proceeding filed by ACS against our client for violating a temporary order of protection resulting in the Judge's decision of first impression that ACS had the burden of proving contempt "beyond a reasonable doubt" because our client faced incarceration as a result of the proceeding.