

Acknowledgments (From 2007 Version of Casefile)

Diane Geraghty, Thomas Geraghty and Angela Vigil did an extraordinary service when they wrote the original Peña case file. They put together a set of materials that is now used across the country to train advocates who work in the field of child and family advocacy, and all of us dedicated to enhancing the quality of that advocacy owe them a huge debt. This version of the case file should be seen not as an attempt to improve their materials, but rather to simply create a set of materials with a slightly different and narrower focus.

I would also like to thank Beth Bobby, Miriam Krinsky, Barrett L. Johnson, David Meyers, Donna M. Pence, and Leah Wilson, each of whom provided invaluable assistance in the development and preparation of these materials. And, of course, I am indebted to the NITA family for their support and for their commitment to improving the quality of legal representation.

Theo Liebmann
Hofstra University School of Law

INTRODUCTION

These materials tell the story of the several months of eight-year-old Eva Peña's contact with the child welfare system and the hearings in court to determine whether she should be placed in and or remain in out-of-home placement. Like many children in juvenile court, Eva has a number of social workers and attorneys who are involved with her case in various capacities. The necessity of collaboration between the legal and social work professions manifests itself regularly in the child protection field, whether it be a government lawyer for a child protection agency who has a social worker as a client, a child's or parent's lawyer who has retained a social worker to provide expert consultation, or lawyers who must work with mental health professionals to prepare reports and testimony at the court's behest.

The goal of this case file is to provide materials and problems to help social workers and attorneys begin developing the skills to work together effectively. With that overarching goal in mind, the problems focus on three important and inter-related competencies that members of both professions should possess: (1) the ability to develop case theory and case planning strategies in a collaborative and interdisciplinary manner; (2) the ability to work together to prepare the presentation of persuasive recommendations, argument, and testimony; and, (3) the ability to argue or examine witnesses effectively (for attorneys) and to testify effectively (for social workers).

FACTUAL BACKGROUND

On January 1, YR-0, Nita City police were called to Maria Peña's residence by a neighbor after Eva Peña, age eight, knocked on his door asking for food at about 8:30 a.m. When asked where her mother was, Eva told the neighbor that she had not seen her mother since the previous morning, that all the food was gone from the apartment, and that she was scared. The neighbor called the Department of Family Services (DFS), which sent a child protection worker, Emile Ryan, to investigate. When Ryan entered the Peña's apartment, he found it insect and rodent infested, and with no food in the refrigerator or kitchen cabinets. In addition, Ryan noted what he thought was drug paraphernalia, including plastic bags and a burnt spoon.

While Ryan was interviewing Eva and the neighbor, Maria Peña appeared at the front door of her apartment. Ryan thought Ms. Peña appeared to be under the influence of drugs or alcohol. Ms. Peña admitted that she had been absent from the home since the day before, working in a bar to make money to support Eva. Ms. Peña thought that she had left enough food for Eva, and she had instructed Eva not to leave the apartment while she was gone. Ms. Peña showed Ryan \$200, which she said she had made at her bar job. Ryan contacted his supervisor to arrange for shelter care of Eva and also contacted the police, who arrived shortly thereafter. The police searched Ms. Peña's apartment and found a bag containing a small amount of crack cocaine. Ms. Peña was placed under arrest and charged with possession of cocaine and child endangerment. She was released after being arraigned later that day. Eva was taken into protective custody. When asked about the whereabouts of Eva's father, Ms. Peña disclosed the father's name, Richard Peña, but said that she had had no contact with Mr. Peña for the last four years and had no idea where he was.

DFS subsequently filed a petition in Nita's Family Court, alleging that Ms. Peña had neglected Eva by leaving her alone and by using drugs. Attorneys were appointed for Eva and for Ms. Peña. At the initial court appearance, the Court temporarily detained Eva. Two weeks later, the Court held a jurisdiction hearing and sustained a CCN section 2513(b) (WIC 300(b)) petition finding that Maria Peña had "failed to protect Eva by leaving her alone with no supervision or support and by possessing and using drugs which rendered her incapable of protecting Eva." One week after that, the court is now holding a disposition hearing to determine whether there are grounds to order Eva removed from her mother's care and placed in out-of-home foster care. DFS is recommending that Eva be removed from her mother and placed in out-of-home care and that reunification services be ordered for Maria Peña.

Kris Forrest, an investigative social worker hired by Eva's lawyer, met with Eva and spoke with Eva's school guidance counselor and pediatrician over the phone. Eva expressed to Forrest a clear and vehement desire to return to the care of her mother. The guidance counselor said that Eva was an average academic student and had no major attendance problems, but that sometimes she got teased by the other students for wearing the same clothes two or three days in a row. The pediatrician said that Eva had never had any major health problems and had been brought to all her regular check-ups by her mother.

Ms. Peña informed her lawyer that she has been attending a drug treatment program at Horizon House for two years. The lawyer contacted Jaime Cruz, a social worker and the Clinical Director at Horizon House, who has been coordinating Ms. Peña's services. Cruz explained that

Interdisciplinary Collaboration in Dependency Cases

Ms. Peña has been coming to Horizon House regularly and progressing well, though she had one relapse a few months prior to this incident. He agreed to write a letter to the court explaining Ms. Peña's involvement with Horizon House.

Interdisciplinary Collaboration in Dependency Cases

In these materials, the following time frames apply:

YR-0 is the current year (*i.e.*, the date of the training in which these materials are used).

YR-1 is one year before YR-0.

YR-2 is two years before YR-0, etc.

Unless otherwise instructed, assume that the Federal Rules of Evidence apply in all hearings conducted under the jurisdiction of the Children's Court of Nita County.

CASE FILE

Applicable Dependency Law

Grounds for Removal and Out-of-Home Placement of a Child in Foster Care

Children's Code of Nita (CCN), Section 2514 (WIC 361(c)(1))

- (A) GENERAL RULE — When a child has been detained from a parent pursuant to the filing of a dependency petition and having been found to be a person described by Section 2513 of the CCN (WIC 300), the court must order the child released back into the parent's custody unless the petitioner makes a showing by **clear and convincing evidence** that there would be a **substantial danger** to the child's physical health, safety, protection, or physical or emotional well-being if the child were returned home, **AND** there are no **reasonable means** to protect the child without removing the minor from the parent's physical custody.

Evidence in Placement Hearings

Children's Code of Nita, Section 2515

In all removal hearings under this Act, the Federal Rules of Evidence shall apply, except that oral hearsay evidence is admissible.

DFS case records are business records under the Act.

Grounds for Continued Out-of-Home Placement at a Statutory Review Hearing

Children's Code of Nita (CCN), Section 2520 (WIC 366.21(e)(1))

- (A) GENERAL RULE---- At the first six-month review hearing, the court shall order **RETURN OF THE CHILD** to the physical custody of the parent, unless the court finds, by a **preponderance of the evidence**, that the return of the child to the physical custody of the parent would create a **substantial risk of detriment** to the safety, protection, or physical or emotional well-being of the child. The Social Worker shall have the burden of establishing that detriment.

**REPORT OF EMILE RYAN, DFS CHILD PROTECTION WORKER,
IN SUPPORT OF REQUEST FOR REMOVAL AND OUT-OF-HOME PLACEMENT .¹**

On January 1, YR-0, I was assigned by the DFS hotline supervisor to investigate a report of an abandoned child at 4651 N. Winthrop in Nita City. I received the assignment at 9:00 A.M. on that day and drove immediately to the address indicated. At that address, I proceeded to the apartment of Thomas Lapier, the person who had called the DFS hotline. Mr. Lapier had Eva Peña in his apartment. Eva, age eight, was eating breakfast.

I first spoke to Mr. Lapier alone, who told me the following: At approximately 8:30 A.M. on January 1, YR-0, he heard a knock on his door. Mr. Lapier, who lives alone, opened the door and saw Eva standing there. She said she was hungry and that her mother was not home. Mr. Lapier said that Eva appeared to be tired and scared. She was also dirty. Mr. Lapier, who knew Eva from the building, invited her in. He asked her where her mother was. Mr. Lapier said that the Peñas had lived in the building for about two years. During that time, Ms. Peña would often leave Eva alone. Mr. Lapier said that he had suspected that Ms. Peña might be a drug user and that he worried about Eva's welfare.

I then proceeded to interview Eva. I interviewed her alone. Eva told me that she had not seen her mother since the previous morning. She could not remember the last time she saw her father. She told me that her mother left home, saying that she would be back soon with food. She told Eva that there was enough food for her in the refrigerator and kitchen cabinets to keep her fed until she came back. She told Eva not to leave the apartment until she returned home. Since there was no school during the holiday break, Eva was not missed in school. Eva was not particularly worried at first, because her mother often left her alone for short periods of time. However, as it got later, Eva became hungry and concerned about her mother. There wasn't much food in the kitchen, and she hadn't heard from her mother. Ms. Peña had left the phone number of Eva's grandmother, but when Eva tried to call her grandmother, the phone would not work. The next morning, when her mother still wasn't home, Eva decided to go to Mr. Lapier for help. Eva said that her grandmother's name was Mrs. Gonzales.

I then asked if I could visit Eva's apartment. Eva said that I could. I left Eva with Mr. Lapier and went upstairs to the Peña apartment. The door was open. It was a one-bedroom apartment. Judging from what I could see, Ms. Peña occupied the bedroom, and Eva slept in the living room on a couch. The sheets and blankets in the apartment looked as if they had not been laundered in some time. There was evidence of insect and rodent infestation.

While I was inspecting the apartment, a woman who identified herself as Maria Peña came into the apartment. She asked me who I was, what I was doing there, and where her daughter was. I identified myself and told her that her daughter was with Mr. Lapier. I noticed that Ms. Peña seemed to be subdued as if very tired or under the influence of drugs or alcohol. After

1. Emile Ryan has been a DFS Child Protection Worker for seven years. He has undergone regular trainings in risk assessment, child interviewing, substance abuse, domestic violence, physical abuse and sexual abuse. Emile has worked on over 500 cases and testified about 25 times. He has been qualified as an expert in risk assessment five times. Because of his extensive experience as a Child Protection Worker, Mr. Ryan frequently leads internal training sessions at DFS. He has a B.A. degree and a master's in social work from the University of Nita.

speaking to her, I proceeded with my inspection of the apartment. In what she said was her bedroom, I found a burnt spoon and some small plastic bags. I asked Ms. Peña why these things were in her apartment. She said that she used to use cocaine, but that she had given it up.

I then told Ms. Peña that I was going to call the police so they could investigate her possible illegal drug use and possible child endangerment. Ms. Peña did not get angry. In fact, she began to cry, saying that she knew that she should not have left Eva alone for so long but that she was working far away at a bar and was making good money. She said that she had left Eva alone before and that she had been OK. Ms. Peña said that she was ashamed that DFS had been called and would rather take Eva and move out of state than let her be placed with strangers in foster care.

Ms. Peña also said that she left Eva with the telephone number of Ms. Peña's mother in case of an emergency. I picked up the phone. The line was dead. I later found out that the phone had been disconnected for nonpayment of the phone bill.

The police arrived shortly after I called them. They searched Ms. Peña's apartment and found the burnt spoon and plastic bags. They found some crack cocaine in one of the bags. At that time, I heard Ms. Peña say that she was not addicted, that this was a "one time thing." The police took Ms. Peña into custody. I learned later that Ms. Peña was charged with possession of crack cocaine and child endangerment.

I then called my supervisor to tell her that I had a girl who needed to be placed in temporary shelter pending a court hearing. I took Eva to a foster home that we use for such purposes, did the necessary paperwork, and notified the proper authorities for purposes of filing a petition and scheduling a court appearance.

On January 3, YR-0, I was present in criminal court when Ms. Peña entered a plea to possession of cocaine and was given a sentence of three years' probation. Because the child neglect charge had been dealt with in children's court, the child endangerment complaint was dismissed.

A black rectangular box containing a white handwritten signature that reads "Emily Ryan".

Child Protection, DFS

Date: January 4, YR-0.

**HANDWRITTEN NOTE FROM MARIA PEÑA TO CHILDREN
(ATTACHED TO EMILE RYAN'S REPORT)**



LETTER FROM JAIME CRUZ, CLINICAL DIRECTOR, HORIZON HOUSE²

My name is Jaime Cruz. I am the Clinical Director at Horizon House, a substance abuse counseling and treatment program in Nita City. I have been asked by lawyers for Maria Peña to write this letter describing Ms Peña's involvement with Horizon House and to explain why I think it would be unfortunate and ill-advised for Ms. Peña to lose custody, even temporarily, of her daughter at this time.

Horizon House is a not-for-profit substance abuse treatment center that offers outpatient alcohol and other drug counseling, intensive day treatment, and in-patient care. Intensive day treatment, the program in which Ms. Peña participated, involves a unified approach to treatment, including case management, group and individual counseling, parenting education, and access to other services. We deal with a range of clients, who are referred to us from public and private sources. We are equipped to provide counseling and treatment for the full spectrum of substance use, including substance abuse and addiction.

Client History

Ms. Peña's husband, Richard Peña, abandoned Ms. Peña and Eva about three years ago. Ms. Peña had to work two jobs. She worked at a dry cleaner during the day and at a bar on Saturdays and Sundays. On days when Eva was not in school, Ms. Peña's mother, Frieda Gonzales, usually watched her.

Ms. Peña has described to me how, one day when she was working at the bar and complaining about how tired she was all the time, one of the other bartenders told her that she should try a little "coke" to pep her up. He also told her that she acted depressed all the time and that she was young and deserved a little fun in her life. According to Ms. Peña, that night she went out with the other bartender and got high for the first time. After that, Ms. Peña admits that she started using cocaine whenever she was feeling overwhelmed. It didn't happen that often, maybe once or twice a month. She never used it in front of Eva. Ms. Peña assumes that her mother noticed, because she started complaining and said she wasn't going to watch Eva while Ms. Peña went out and partied. The relationship between Ms. Peña and her mother, which had always been good, apparently started to deteriorate quickly. Ms. Peña felt she could safely leave Eva alone at home if she was at work, but only for short periods of time, maybe an hour or two.

Ms. Peña came to Horizon House on July 1, YR-2, when she was twenty-six years old. She apparently was referred here by her mother, who suspected that she was using cocaine. When she first came to Horizon, I met with Ms. Peña, and I explained our program and protocols, in-

2. Jaime Cruz has served as clinical director of Horizon House since YR-8. Before that he was a certified substance abuse counselor for nine years on the staff of Horizon House. Prior to receiving his substance abuse counseling certificate from the State of Nita, he served as a case worker in a children's residential center, where the majority of children were wards of the state. Mr. Cruz has lectured to medical students, social workers, law students, child development specialists, and others on substance abuse and its effects on children and families. He authored a chapter on "Understanding Addiction, Substance Abuse Treatment, and Recovery" in a Nita Department of Health and Human Services Report to the Nita General Assembly. In YR-5 he was recognized by the National Substance Abuse Counselors Association for his outstanding dedication and advocacy on behalf of substance-affected families. Mr. Cruz has a B.A. degree and a master's in social work from the University of Nita.

cluding the fact that we require weekly drug screenings for all clients. During our first interview, Ms. Peña admitted that she had been using cocaine regularly for the past several months. She also identified herself as “depressed,” although she had not received a formal diagnosis or treatment.

Ms. Peña agreed to enter our intensive day treatment program, although she continued to resist any suggestion that she had a serious substance abuse “problem.” In the intensive day program, clients are required to attend each day the first week, and then at least weekly after that, depending on the seriousness of the case and the desire of the client. Ms. Peña was assessed as needing “at least weekly” participation. The day treatment program combines one-on-one counseling and educational sessions designed to help program participants understand addiction, substance abuse treatment and recovery, and opportunities for social interactions. From the beginning, Ms. Peña made good progress. She continued to display some signs of denial about the degree of her drug use, but she was open to the counseling process and had an excellent attendance record.

As sometimes happens in the lives of individuals we work with, several things appear to have triggered a relapse in Ms. Peña’s case, beginning in approximately June YR-1. It is hard to pinpoint an exact date because relapse is usually not a single occurrence but a process whereby increasing stress levels can lead to physical, emotional, or psychological distress. As the stress builds, substance abusers return to old patterns of use and dependence. In Ms. Peña’s case, the stress appears to have come from job-related pressures associated with having to leave early for counseling appointments. After she was fired, her relationship with her boyfriend also fell apart and the downward spiral turned into a tailspin. Ms. Peña began missing her weekly appointments and finally stopped attending altogether. We are, of course, always disappointed when a client who has made good progress relapses, but relapse is considered part of the recovery process, and in a motivated client such as Ms. Peña, there is a good chance that they will recover and return to counseling.

That is what happened in Ms. Peña’s case. In early October YR-1, Ms. Peña resumed her treatment. Even though Ms. Peña has been through some difficult moments since then, she has worked hard, and all of her weekly random drug tests have been negative. I am really proud of her, because the problem with Eva being removed could have brought on another relapse, but it appears not to have done so. I have had some opportunity to see Eva at some of our activities here at Horizon House such as holiday parties and picnics. I last saw them together this past summer. Ms. Peña and her daughter always seemed very close.

Client’s Account of Involvement with DFS

According to Ms. Peña, because things got pretty bad financially toward the end of YR-1, she took a bartending that would pay \$200 a day. She claims that she made sure she left milk and cereal and other food that didn’t require Eva to turn on the stove and told Eva not to leave the apartment until she got back. She also says that she left a note with the grandmother’s telephone number.

When Ms. Peña returned from the job, the caseworker was already in her home and said he was going to place Eva in foster care. Ms. Peña felt horrible about leaving Eva alone for so long. She says it showed bad judgment. Ms. Peña also says that the drug paraphernalia and drugs

found by the police belonged to her ex-boyfriend, who probably still had a key to the apartment and had used it as a spot to dump his stuff. Ms. Peña says that she has already changed the locks since then. She also said she made the admission to possession because her lawyer told her that, if the drugs were in her house, then she was legally responsible for them. Ms. Peña maintains that when she was arrested, she was not high. She says that she was tired after having been up all night and having worked for two days straight. In fact, Ms. Peña came in for a supervised drug test two days after the arrest and tested negative for any illegal substances. She is currently participating regularly in our program.

In my opinion, DFS has not taken into consideration the remarkable transformation that Maria Peña has undergone during the last several months. Nor does DFS take into account the fact that Maria Peña is now, and always has been, totally dedicated to the welfare of her child. When she left Eva alone prior to the time when Eva was taken into DFS custody, she did so out of desperation to support her. She thought that Eva would be safe in her apartment. She left food for Eva. She told Eva to call her grandmother if the necessity arose. Although Mrs. Peña's decision to leave Eva may be characterized as an unfortunate lapse of judgment, it does not constitute the kind of behavior that would justify removing Eva from Ms Peña's custody.

Mrs. Peña's substance abuse is, indeed, a significant issue bearing upon the welfare of her child. Having said this, I believe that Mrs. Peña has proven that she is serious about overcoming this problem. Unfortunately, we cannot predict with certainty which clients will end up fully recovering from substance abuse, but my experience with Ms. Peña makes me confident that she can succeed. I worry, however, that continuing Eva's placement in foster care will undermine her motivation for treatment and permanent recovery.

Signed,

A black rectangular box containing a white handwritten signature that reads "Jaime Cruz". A horizontal line extends from the right side of the box.

Clinical Director and
Certified Substance Abuse Counselor

Date: January 10, YR-0

Memorandum

To: Eva Peña Case File
From: Kris Forrest, M.S.W.³
Re: Interview with Eva Peña and Collateral Sources
Date: January 4, YR-0

At the request of Eva Peña's attorney, I spoke with Eva as well as two collateral sources to determine what Eva's wishes are regarding placement in foster care as well as to gather some background factual information. I met with Eva at her foster home and spoke with the collateral sources over the phone. I also had the opportunity to observe one visit between Eva, her mother, and her grandmother.

Interview with Eva

General Impressions

Eva Peña is a well-spoken, articulate eight-year-old girl. She appeared able to understand and reiterate my description of the court proceedings and her legal options. She did not appear to be unduly influenced by her mother (or others) and was age appropriate in other areas of development.

Foster Family

After being removed from her mother three days ago, Eva was placed with the Gorman family. Eva says that she gets enough food in this home but definitely needs more clothes, especially new sneakers. She also says she needs her nebulizer for her asthma.

Eva doesn't like living in a new neighborhood where she doesn't know anybody, and she misses her old apartment and school. She has two foster siblings, but they don't hang out because they are just little kids. Discipline consists of no television. Eva says that her foster parents are too strict, and that Mr. Gorman yells too much. She did not complain of any cursing or hitting but said he "loses his temper" and makes Eva nervous, although she couldn't elaborate further. She said Mr. Gorman gets mad when he hears her playing the radio. Eva says that she gets the feeling that the Gormans want her to leave. She thinks they like younger kids. Eva started

3. Kris Forrest has been a self-employed social worker since YR-4. She focuses on cases in the Juvenile and Family Courts, especially those with adolescents and those involving domestic violence and drug abuse. She has handled over 100 cases and has testified six times. Four of those times she testified for parents; the other two she testified on behalf of the child. She has been qualified as an expert witness once before, in a case involving domestic violence allegations. Before entering private practice, Ms. Forrest worked for four years as a DFS Child Protection Worker. Ms. Forrest has led workshops at continuing legal education classes for lawyers on social work investigative practice, and on working with victims of domestic violence. She also co-authored an article on interviewing techniques for child interviews that was published in "Social Worker Today," a professional journal for social workers. Ms. Forrest has a B.A. degree and a master's in social work from the University of Nita.

crying at this point and said that “no one wants her.”

Underlying Incident

Eva says that what “happened with the police” was “no big deal.” Her mother just went out for a little while, and she had asked Tom, their neighbor, if she could eat breakfast with him. Eva states that the case worker was lying when she said that Eva’s mom wouldn’t feed Eva for days at a time. Eva reports that her mom would only leave her alone when she had to go to work at a local bar and she always left some food. Also, Eva says that she knew that she could call her grandmother if there was a problem, but “just that one time, Gram’s phone didn’t work.” She says that her mom is a “very hard worker” and “does her best.” Eva said that the case worker also lied when she said that Eva was filthy dirty. Eva reported that whenever the hot water was working in the apartment building, Eva would give herself a bath. She couldn’t remember how often this occurred. Eva said that she would sleep in the bedroom and her mother would sleep on the couch.

When asked whether she knew what had been happening in court, Eva said that the case worker told her that her mom used cocaine—that is why she had to live in foster care.

Kinship Resources

Eva’s father is Richard Peña. She has not seen him since she was in kindergarten. Eva also reports that she would rather live with her grandmother than in foster care, but she is not sure that her grandmother has enough room for her.

Client’s Current Contact with Mother

According to Eva, she has had weekly visits with her mother. She said that she loves and misses her mother very much, and she and her mom both cry when the visits end. They met at the foster care agency, which Eva doesn’t like “because there is no privacy” and “the caseworker was always getting into our face.” During their last conversation, her mother reported that she wants Eva to meet her new boyfriend, who she met in her drug program. Eva said that her mother has had a lot of boyfriends, but they are usually “kind of scary.” According to Eva, Ms. Peña’s last boyfriend was physically abusive towards Ms. Peña and even pulled a gun out and threatened to shoot Ms. Peña. Eva says she was there when this happened. She went on to say that none of these boyfriends ever hurt Eva and sometimes they help out with buying groceries. Eva asked that we not tell anyone about Ms. Peña’s last boyfriend.

Client’s Wishes Regarding Placement

Eva repeatedly stated throughout the conversation that she loves her mother and wants to move back home right away. She said that her mother “sees a guy that has helped her kick the drugs.” When asked when she thought that her mother last used drugs, Eva responded “not for at least a month or two.” She said her mother only drinks beer “once in a while,” because it makes her sleepy. Eva said that her mother looks beautiful and wants to start attending beauty school.

Collateral Contact with School

I spoke with Mr. Katz, Eva's teacher at Nita Elementary School. Eva is in 3rd grade in regular education. She has had no major attendance problems. Mr. Katz said that Ms. Peña came to the parent teacher conference this year and seemed tired but interested in Eva's educational progress. Mr. Katz said Eva gets along pretty well with the other students, but sometimes she gets teased for wearing the same clothes several days in a row. Mr. Katz also said that Eva had been lagging a bit behind the rest of the class and often came in without having done her homework, but that this had improved somewhat since the parent-teacher conference in October and since he began doing some one-on-one work with Eva twice a week during recess. He said it was a shame that she was put in foster care and placed in a new school just when she was showing such encouraging progress academically.

Collateral Contact with Pediatrician

I spoke briefly with Dr. Arden, Eva's pediatrician. Eva has been brought to her regular check-ups. Eva has asthma and uses a nebulizer. Dr. Arden showed Eva and Ms. Peña how to use the nebulizer. Dr. Arden says she has never had any cause to call in a child maltreatment report regarding Eva.

Visitation Observation

I observed a visit between Eva, Ms. Peña, and Eva's maternal grandmother, Mrs. Gonzalez. The visit lasted on hour. When Eva saw her mother, she ran to greet her with a hug. During the visit they played some board games and Ms. Peña asked Eva about school and about her foster home. Eva laughed a lot and seemed very happy, except when she was talking about the foster home. Ms. Peña smiled but looked tired. She also seemed to be arguing with Mrs. Gonzalez at times, but they were speaking too quietly for me to hear what they were saying. Eva began crying, and then screaming, when she had to be separated from her mother at the end of the visit.

SECTION 1. PROBLEMS

PROBLEM 1
(Emile Ryan)

Emile Ryan has been called by the County Attorney at the hearing to determine whether there are legally sufficient grounds to remove Eva and place her in foster care.

1. For the County, conduct a direct examination (or prepare sample questions) of Emile Ryan.
2. For the Respondent, Maria Peña, conduct a cross-examination (or prepare sample questions) of Emile Ryan.
3. For Eva Peña, conduct a cross-examination (or prepare sample questions) of Emile Ryan.

PROBLEM 2
(Jaime Cruz)

Jaime Cruz, the Director of Horizon House, has been called by Maria Peña's lawyer to testify at the hearing.

1. For Maria Peña, direct examination of Jaime Cruz.
2. For the County, cross-examination of Jaime Cruz.
3. For Eva Peña, cross-examination of Jaime Cruz.

PROBLEM 3
(Kris Forrest)

Kris Forrest, a social worker retained by Eva Peña's attorney to assist on the case, has been called by Eva's lawyer to testify in support of Eva's position at the hearing.

1. For Eva Peña, direct examination of Kris Forrest.
2. For the County, cross-examination of Kris Forrest.
3. For Maria Peña, cross-examination of Kris Forrest.

PROBLEM 4
(Introduction of Records)

Part 1: Letter from Jaime Cruz

- (a) For Maria Peña, introduce into evidence the letter written by Jaime Cruz. You may use any witness or witnesses you desire to lay the foundation for the exhibit. Examine the witness(es) to the extent necessary to lay the foundation and then offer the exhibit. Be prepared to discuss your choice of witness(es).
- (b) For the County, oppose the examination of the witness(es) and the offer of the exhibit. Be prepared to voir dire the witness(es) on the admissibility of the exhibit.

Part 2: Memorandum of Kris Forrest

- (a) For Eva Peña, introduce into evidence the memorandum written by Kris Forrest. You may use any witness or witnesses you desire to lay the foundation for the exhibit. Examine the witness(es) to the extent necessary to lay the foundation and then offer the exhibit. Be prepared to discuss your choice of witness(es).
- (b) For the County, oppose the examination of the witness(es) and the offer of the exhibit. Be prepared to voir dire the witness(es) on the admissibility of the exhibit.

Continued Factual Background

Assume for purposes of the following exercises and problems, that at the dispositional hearing, the court found that Eva should be removed from the physical custody of her mother, Maria, and place in out-of-home placement. At that time the court ordered reunification services to Maria Pena and set a six-month statutory review hearing for Eva's case. For this statutory review hearing, DFS has recommended that Eva remain placed in out-of-home foster care and that reunification services will continue for Maria Pena. The Agency recommends that the court order a permanency hearing be set and that DFS will continue to make efforts to return Eva to her home or finalize an alternate permanent plan. Attached to the DFS's report is Maria Pena's Parenting training course certificate, a report from Jamie Cruz from Horizon House, and a report from Kris Forest who interviewed Eva at her foster home and visited Maria Pena's home to assess potential return of Eva to the home.

6 Month Statutory Review Report by Emile Ryan

Report of Emile Ryan, DFS Child Protection Worker,

In Support of Continued Reunification Services and Out-of-Home Placement .[11](#)

It is the time and place for the Six-Month Status Review hearing on behalf of Eva Pena, age nine years old. The undersigned has been the assigned social worker since DFS Nita City received a referral requiring an immediate response on January 1, YR-0. The referral alleged that Eva, then eight years old, had been left by her mother, without supervision, for multiple hours, and possibly overnight. Eva was reported to be hungry and had been left alone in an apartment without adequate food, nor a working telephone, and there was evidence of insect and rodent infestation. Furthermore, responding officers found evidence of drug paraphernalia in the apartment, and the mother's abusive ex-boyfriend had access to the home as he possessed a key to the apartment. During the course of the investigation, it was established that the mother, Maria Pena, had on multiple occasions, left Eva alone in the apartment while working one or two jobs, and also when going to get food. It was also determined that Ms. Pena had recently relapsed in her sobriety, using cocaine obtained by a peer at one of her jobs. Eva was taken into protective custody January 1, YR-0. The Court subsequently held a detention hearing, ordering temporary removal, having found Eva Pena to fall within the Children's Code of Nita, Section 2514, and Section 2515. The Court held

the Jurisdiction/Disposition Hearing at which time the Court found by clear and convincing evidence that there was an imminent risk to Eva's life, safety or health in the care of Ms. Pena and that a return to Ms. Pena was contrary to Eva's best interest. At the Jurisdiction/Disposition Hearing, Ms. Pena was ordered by the Court to participate in services to mitigate the issues that led to the removal of Eva, to include substance abuse treatment, drug testing, a parenting course and supervised visitation. The case plan components as they pertain to Eva Pena are parent-child visitation, well-child health and dental checkups, and monthly social worker visit.

It is the time and place of the Six-Month Review hearing, and it is the recommendation of DFS Nita City that Eva remain in out of home care and that Family Reunification Services be continued for the mother, Ms. Pena, and that a 12 Month Status Review Hearing be set within the statutory time frame.

Maria Pena, Mother:

Substance Abuse Treatment and Testing:

On January 3, YR-0, Ms. Pena entered a plea to possession of cocaine and was sentenced to three years' probation. As a condition of her probation, as well as a component of her Court ordered case plan in the Dependency matter, Ms. Pena participates in substance abuse treatment, which is being provided by Horizon House, a substance abuse counseling and treatment program in Nita City.

Ms. Pena reports that she has actively engaged in the intensive program at Horizon House with at least weekly sessions. Jaime Cruz, Clinical Director with Horizon House, reports that Ms. Pena has made "significant progress in treating her substance abuse problems". He states that she is "doing well and committed to her sobriety". Ms. Pena has continued to participate in the intensive program and is randomly drug tested at least once per week. She has been directed to test on 30 occasions and has missed three tests. On two of the occasions when she was directed to test, Ms. Pena identified that it conflicted with work, and she was unable to test. On one occasion, she stated that she was unable to call as she was already at work. All 27/30 tests that she participated in were negative for the presence of drugs.

The Court is respectfully referred to the Letter from Jaime Cruz, of Horizon House, attached and made a part of this report.

Parenting Course:

Ms. Pena participated in a 10 week 'Positive Parents' parenting course through Horizon House which focused on child development, health relationships, and progressive parenting. Ms. Pena was reported to have participated adequately and had good attendance.

The Court is respectfully referred to the Parenting Certificate for Completion, attached and made a part of this report.

Parent- Child Visitation:

As Ms. Pena was engaged in both substance abuse treatment and parenting classes with Horizon House, the program sought and received permission from the Agency to incorporate a plan of supervised parent-child visitation into their treatment plan. It is reported in Jaime Cruz's aforementioned letter that the visitation has gone well, and that Ms. Pena is appropriate with Eva. It was reported that Ms. Pena has attended all of her visits except one, which she identified in advance was problematic as it conflicted with work.

Eva Pena, Minor:

Placement Stability:

Eva is in her second placement since removal. On January 1, YR-0, at the time of removal, Eva was placed in a foster home in Nita City. Eva did not feel comfortable in the home, citing that the foster father yelled a lot, and that she did not feel wanted there. Additionally, the home was too great a distance from her school of origin to maintain her attendance there. The agency was asked to explore placement with the maternal grandmother, with whom the mother had a stressed relationship, but whom she also utilized for periodic childcare. The maternal grandmother was pursued for placement but ultimately was unable to provide placement, in part due to space constraints, and in part due to the rigors of parenting. The foster home that Eva presently resides in appears to be a safe, appropriate and caring home. Eva reports that she feels safe, she has been able to return to her school of origin and is reported to be doing well. The home is a concurrent planning home.

Statement of Foster Parents:

The present care givers report that Eva is a delightful child with an engaging personality. She is up to date on her well-child medical and dental visits, doing well in school, and has developed a solid friend base. They state that the school said that she had previously been teased at school primarily due to hygiene issues, but that is no longer the case. They report that she is not engaged in extracurricular activities due to the needs of visitation. They reported that she looks forward to visiting with her mother.

ASSESSMENT:

By all reports, Ms. Pena appears to be doing very well in her treatment program and visitation. Ms. Pena has also completed a ten-week parenting class. Eva is reported to be doing well in school and thriving in her foster home.

Ms. Pena's has a long-standing history of being unable to safely meet Eva's needs and inadequate supervision of Eva. At the time of removal, despite having already been connected to Horizon House, Ms. Pena relapsed and left her child in a situation that clearly placed her in jeopardy. While Ms. Pena is to be applauded for the efforts she has made thus far, the Agency assesses that it would be prudent to monitor if Ms. Pena can sustain the level of engagement she has demonstrated thus far. It has yet to be determined if Ms. Pena can maintain sobriety with the decreasing level of supervision as she titrates down from the intensive program at Horizon House. Next steps for Eva and Ms. Pena will include a transition from fully supervised visits at the treatment program, to less structured visitation, and eventually daytime home visits and overnight visitation. Ms. Pena will need support to be structure in place in order to be successful as we continue the path towards reunification.

SUMMARY RECOMMENDATION:

it is the recommendation of DFS Nita City that Eva remain in out of home care and that Family Reunification Services be continued for the mother, Ms. Pena, and that a 12 Month Status Review Hearing be set.

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Emile Ryan,

Child Protection, DFS

[1]. Emile Ryan has been a DFS Child Protection Worker for seven years. He has undergone regular trainings in risk assessment, child interviewing, substance abuse, domestic violence, physical abuse and sexual abuse. Emile has worked on over 500 cases and testified about 25 times. He has been qualified as an expert in risk assessment five times. Because of his extensive experience as a Child Protection Worker, Mr. Ryan frequently leads internal training sessions at DFS. He has a B.A. degree and a master's in social work from the University of Nita.

LETTER FROM JAIME CRUZ, CLINICAL DIRECTOR, HORIZON HOUSE⁴

My name is Jaime Cruz. I am the Clinical Director at Horizon House, a substance abuse counseling and treatment program in Nita City. I have been asked by lawyers for Maria Peña to write this letter describing Ms Peña's continued involvement and progress with the Program and to explain why I think Eva Pena, her daughter, should be returned to her care at this time.

Horizon House is a not-for-profit substance abuse treatment center that offers outpatient alcohol and other drug counseling, intensive day treatment, and in-patient care. Intensive day treatment, the program in which Ms. Peña participated, involves a unified approach to treatment, including case management, group and individual counseling, parenting education, and access to other services. We deal with a range of clients, who are referred to us from public and private sources. We are equipped to provide counseling and treatment for the full spectrum of substance use, including substance abuse and addiction.

Client History

Ms. Peña came to Horizon House on July 1, YR-2, when she was twenty-six years old. She apparently was referred here by her mother, who suspected that she was using cocaine. When she first came to Horizon, I met with Ms. Peña, and I explained our program and protocols, including the fact that we require weekly drug screenings for all clients. During our first interview, Ms. Peña admitted that she had been using cocaine regularly for the past several months. She also identified herself as "depressed," although she had not received a formal diagnosis or treatment.

Ms. Peña agreed to enter our intensive day treatment program, although she continued to resist any suggestion that she had a serious substance abuse "problem." In the intensive day program, clients are required to attend each day the first week, and then at least weekly after that, depending on the seriousness of the case and the desire of the client. Ms. Peña was assessed as needing "at least weekly" participation. The day treatment program combines one-on-one counseling and educational sessions designed to help program participants understand addiction, substance abuse treatment and recovery, and opportunities for social interactions. From the beginning, Ms. Peña made good progress. She continued to display some signs of denial about the degree of her drug use, but she was open to the counseling process and had an excellent attendance record.

4. Jaime Cruz has served as clinical director of Horizon House since YR-8. Before that he was a certified substance abuse counselor for nine years on the staff of Horizon House. Prior to receiving his substance abuse counseling certificate from the State of Nita, he served as a case worker in a children's residential center, where the majority of children were wards of the state. Mr. Cruz has lectured to medical students, social workers, law students, child development specialists, and others on substance abuse and its effects on children and families. He authored a chapter on "Understanding Addiction, Substance Abuse Treatment, and Recovery" in a Nita Department of Health and Human Services Report to the Nita General Assembly. In YR-5 he was recognized by the National Substance Abuse Counselors Association for his outstanding dedication and advocacy on behalf of substance-affected families. Mr. Cruz has a B.A. degree and a master's in social work from the University of Nita.

After relapsing in June YR-1, in early October YR-1, Ms. Peña resumed her treatment. Even though Ms. Peña has been through some difficult moments since then, she has worked hard and has continued with the Program even after Eva was removed from her care.

Client's Account of Involvement with DFS

Near the end of year one, Eva was detained by DFS after the social worker visited the home when Ms. Pena was not there, and Eva was alone. As a result, Ms. Pena was arrested, but ultimately charges were dropped. Ms. Pena indicated that she had not been using at the time and was tired from her job. After Eva's detention, Ms. Peña came in for a supervised drug test two days after the arrest and tested negative for any illegal substances. Eva was later removed from her care and placed in foster care and Ms. Pena was ordered to continue her program here at Horizon House, complete our parenting program and continue to drug test. She is currently participating regularly in our program.

Since the last hearing in Eva's case, Ms. Pena has continued in our intensive program with at least weekly sessions. She is called to randomly drug test at least one time per week. Since the last hearing, she has been called to drug test 30 times and had attended and tested 27 out of 30 times. 2 of the times she was called and needed to miss a test, she let us know that she had to miss a test due to her work schedule. One of the times she missed a test, she was unable to call as she was already at work. All of the tests she took were negative. Ms. Pena also completed our 10-week Positive Parenting Class Program.

In addition, we have hosted supervised visitation for Ms. Pena and Eva in our Center and the staff report that the visits between Ms. Pena and Eva are very positive and Ms. Pena is appropriate with Eva. Ms. Pena has attended all of her visits except one which conflicted with her job schedule, and she let us know of the conflict in advance.

Mrs. Peña's substance abuse has had bearing upon the welfare of her child. Having said this, I believe that Mrs. Peña has proven that she is serious about overcoming this problem and has made significant progress since the last hearing in this case. She has continued in treatment, completed her parenting program and consistently tested negative for any substances. At this time, I believe that Ms. Pena has made significant progress in treating the substance abuse problems that have been a problem for her. While recovery is always a continuing effort, I believe Ms. Pena is doing well and is committed to her sobriety and that as she has in the past, will seek out additional help if she needs it.

Signed,

A black rectangular box containing a white handwritten signature that reads "Jaime Cruz". A horizontal line extends from the right side of the box.

Clinical Director and
Certified Substance Abuse Counselor

Positive Parents

10 Week Parent Training Course

Horizon House

Nita City, Nita

This certifies that Maria Pena successfully completed the 10 week “Positive Parents” program through Horizon House and received her certification.

A black rectangular box containing a white handwritten signature that reads "Jaime Cruz".

Clinical Director
Horizon House
Nita City

Memorandum

To: Eva Peña Case File
From: Kris Forrest, M.S.W.⁵
Re: Memo/Report of Interview and Home Evaluation
Date: July 6, YR-0

This worker was assigned to this case on June 12, YR-0 by his supervisor after court-appointed minor's counsel made an in-house referral requesting social work assessment with regards to upcoming 366.21(e) hearing and the mother's request to have Eva returned to her care.

Assessment Activities

- Review of DFS Status Review report prepared for the upcoming 366.21(e) hearing
- Interview of Eva Peña in the home of her current confidential resource foster home
- Home Evaluation of Maria Peña's new apartment

This worker has spent 12 hours to date working on this assessment.

Interview of Eva Peña in the home of her current confidential resource foster home

This worker interviewed Eva alone and with the door closed in her bedroom in her current confidential resource foster home. This worker explained his role and attorney-client privilege in a developmentally friendly manner to Eva and asked if she had any questions about this, Eva replied, "no."

This worker explained the upcoming hearing and that at the hearing the consideration is whether or not she should return to the home of her mother or continue services to her mother. Eva stated that she really wanted to go home to her mother. She stated that she missed her mother and that while she enjoyed the visits she has with her mother; she doesn't like when they have to end and wishes "they could just keep going." Eva stated that during one of the visits, mom had told her about their new bedroom in the apartment she had recently rented, and Eva stated that she was excited to see it and to live there.

This worker asked Eva about how things are in her foster home. Eva stated that her foster parents are "really nice" and that they treat her well. She reported that she has her own room and then Eva proceeded to give this worker a tour of her room and introduce this work-

5. Kris Forrest has been a self-employed social worker since YR-4. She focuses on cases in the Juvenile and Family Courts, especially those with adolescents and those involving domestic violence and drug abuse. She has handled over 100 cases and has testified six times. Four of those times she testified for parents; the other two she testified on behalf of the child. She has been qualified as an expert witness once before, in a case involving domestic violence allegations. Before entering private practice, Ms. Forrest worked for four years as a DFS Child Protection Worker. Ms. Forrest has led workshops at continuing legal education classes for lawyers on social work investigative practice, and on working with victims of domestic violence. She also co-authored an article on interviewing techniques for child interviews that was published in "Social Worker Today," a professional journal for social workers. Ms. Forrest has a B.A. degree and a master's in social work from the University of Nita.

er to each of her dozen stuffed animals. She showed this worker a list of rules that were listed on a piece of paper taped to the back of her bedroom door, it showed her bedtime, her chores, and other rules around behavior. This worker asked Eva what happens when she does something to break these rules, and she reported that she had to sit in the time out stool in the kitchen for nine minutes. This worker thanked Eva and in closing asked Eva if there was anything that she said during the interview that she wanted to keep confidential. Eva reported that there was nothing she wanted to be kept confidential. This worker said goodbye to Eva and went downstairs to talk to her foster mother.

Eva's foster mother stated that she is doing well in school, which is right down the street, and her teachers have not reported any behavioral issues to date. She stated that when Eva first arrived, she would hoard food in her room under her bed, which when they would go in to clean her room, they would discover the food, covered in ants. The foster parents called a family meeting with Eva, and they made a box of packaged food items for Eva to keep in her room and Eva promised not to bring other food items into her room. Eva's foster mother further reported that her asthma has been well controlled for some time now.

Home Evaluation of Maria Peña's new apartment

After minor's counsel sought permission from mother's counsel for this worker to conduct an evaluation of Ms. Peña's home, this worker called Ms. Peña and setup a time to go out to her apartment later that week.

Ms. Peña resides in apartment 2C, a second-floor unit of an apartment complex nestled between a motel and a restaurant in the industrial section of Nita City. This worker recognized the location as being described in DFS reports as the same part of Nita City where mom used to purchase cocaine. Ms. Peña moved into the one-bedroom apartment one month ago. The main entrance to the house enters into the living room, off to the right is a small eat-in kitchen area followed by the kitchen itself. As you enter the main entrance, straight ahead past the living room is a hallway which leads to one door on the left and one door on the right, the right-hand door led to the bedroom while the left-hand door leads to the apartment's sole bathroom. The apartment is sparsely furnished with cardboard moving boxes stacked in corners and things partially removed from those boxes, it appears that Ms. Peña is still moving in. As this worker enters the apartment, a woman who later is introduced by Ms. Peña as her mother is at the sink doing the dishes. She remained throughout the visit, busy-ing herself unpacking boxes while Ms. Peña showed this worker around.

In the kitchen, this worker opened the fridge and cabinets with Ms. Peña's permission. The fridge holds a gallon of milk, lunch meat and cheese, and the leftovers of what appears to be macaroni and cheese. In the cupboards there are several boxes of dry macaroni and cheese, canned meats, tortillas, and a half loaf of bread. Ms. Peña stated that she was waiting for court and the judge to decide if Eva will come home to her before she buys more food. In the drying rack are several dishes that appear to be related to the leftover macaroni and cheese in the fridge.

The living room has several chairs taken from the dining room set and a foldable table between them. These chairs face a flat screen TV which is on the floor across the room. Underneath the window, which faces out to the front of the apartment, is a wall A/C unit and underneath this unit on the wall are several black specks which this worker recognized to be mold. Ms. Peña explained that she had complained to the landlord about these specks, but she hadn't yet heard back from him. On the foldable table in the living room is a landline

telephone and, with Ms. Peña's permission, this worker picked it up to test if it was working, but it was not. Ms. Peña explained that because she is on a limited income, she was waiting for court and the judge to decide if Eva will come home to her before turns the phone service on.

Ms. Peña's bedroom has a full-size bed, a futon that folds down into a bed, a large dresser, a nightstand between the bed and futon, and a closet. This worker observed only Ms. Peña's clothes in the closet. The walls were decorated in child-friendly movie/TV show posters and there were several child-themed blankets and stuffed animals on the futon. Ms. Peña explained that Eva would sleep on the futon if she were returned to her care.

Assessment

It is this worker's opinion that Eva should be returned to Ms. Peña's care at this time. Ms. Peña has taken several steps to address the circumstances which have led to child welfare involvement. For example, she has secured appropriate, habitable housing for herself and Eva. Ms. Pena continues to build her support system around maintaining her sobriety. According to DFS, Ms. Peña has secured a voucher for childcare when she needs to work so that she has someone to watch Eva while she is at work. Ms. Peña also identified a few relatives in the area, her mother, as persons who can watch Eva should she find herself in need of last-minute childcare. Further, DFS report indicates the Ms. Peña is maintaining her sobriety as evidenced by negative drug tests and visitation logs reveal that visits between Eva and Ms. Peña are going well. This worker acknowledges that there are concerns regarding the newness of Ms. Peña's sobriety and certain aspects of Ms. Peña's home not being ready, but on the whole, this worker feels that return with ongoing court supervision is in Eva's best interest at this time.

Section 2. Problems

Problem 1

1. Using the Case theory (good facts/bad facts) method from the first exercise, list the facts and considerations to support a recommendation for continued out-of-home placement, or for an argument return to Maria Pena. Be sure to assess and include the information contained in the documents attached to the report which have been considered by the court.

Problem 2

2. For DFS, draft the necessary components of your recommendation that Eva Pena should not be returned home and should remain in out-of-home care. Use the relevant facts, attached documentation and applicable law and standards to draft your recommendation.

4. As the DFS attorney, draft an argument to support your social worker's recommendation. Be sure to craft an argument utilizing the relevant facts contained in both the report and attachments and the applicable law and standards. Do not simply restate the recommendation of the social worker contained in the report.

1. As mother's attorney, draft an argument that Eva should be returned to her mother's care at this statutory review. Use the relevant facts, attached documentation and applicable law and standards to draft your legal argument.

2. As Eva's attorney, draft the argument that you think is supported by the relevant facts and documentation, and the applicable law. Be sure to include Eva's wishes on the issue of return to Maria Pena, and how that affects your argument to return or have Eva remain out of home.