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WORKING
WITH
LITIGANTS IN PERSON

ELISSA DA COSTA-WALDMAN

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LITIGANTS IN PERSON

WHY ARE THERE SO MANY NOW?

1. LIMITED LEGAL AID
2. LAWYERS ARE EXPENSIVE
3. SOURCES OF FUNDING/INCOME DRIED UP
4. DIY – WHY NOT? ITS EASY ISN'T IT?

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LITIGANTS IN PERSON

MOSTYN J ON THE REMOVAL OF LEGAL AID IN MG AND JG V JF (CHILD MAINTENANCE – COSTS ALLOWANCE) [2015] EWHC 564 (FAM)

‘ IT WAS IMPOSSIBLE FOR THE PARTIES TO BE EXPECTED TO REPRESENT THEMSELVES HAVING REGARD TO THE FACTUAL AND LEGAL ISSUES AT LARGE

HOLMAN J SAID MUCH THE SAME
A MCKENZIE FRIEND WORKING GROUP WAS STARTED

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There are different types of LIPS-

Those who truly represent themselves

Those who have McKenzie Friends

Those who 'Unbundle'

Direct Access LIPS

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The McKenzie Friend

Defined by FPR 2010 PD 12G paragraph 6.1 as
'any person permitted by the court to sit beside an
unrepresented in court to assist that litigant by
prompting, taking notes and giving him advice.

See also Practice Guidance: McKenzie Friends Civil
and Family Courts [2010] 2 FLR 962

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The Unbundler

The Hokey Cokey Approach to Legal Representation

Seeks shorts burst of advice, drafting and letters!

Practitioners beware!!

Minkin –v- Landsberg [2015] EWCA Civ 1152

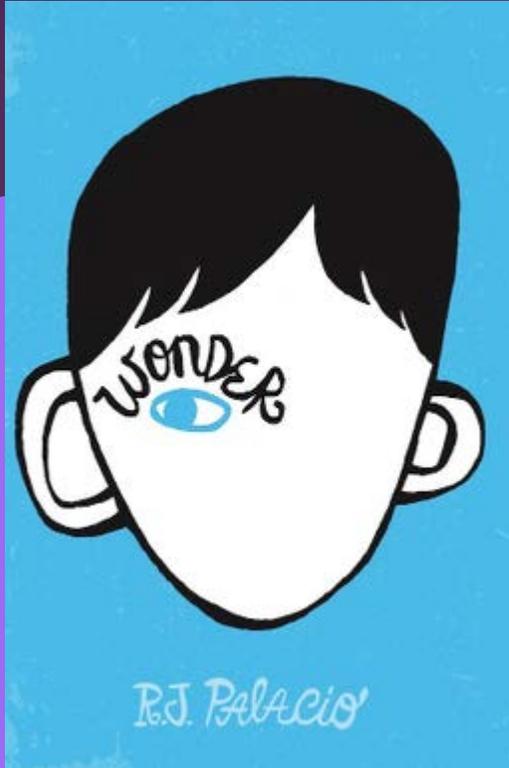
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WORKING WITH THE LITIGANT IN PERSON WHO IS TRULY
REPRESENTING THEMSELVES

IN THE PAST THE LITIGANT IN PERSON HAS BEEN REGARDED AS A BIT OF A
NUISANCE!

SINCE IN PRACTICE THESE DAYS WE MEET THEM MORE FREQUENTLY, WE AS
PRACTITIONERS NEED TO CHANGE OUR ATTITUDE

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MR BROWNE'S PRECEPTS

'WHEN GIVEN THE CHOICE BETWEEN BEING RIGHT
AND BEING KIND, BE KIND.'

LET'S NOT FORGET THAT NO-ONE REALLY CHOOSES TO
BE IN A COURT SETTING OR IN A DISPUTE

SO EVEN IF THE LIP IS NOT ON THEIR BEST BEHAVIOUR
WE NEED TO BE ON OURS!

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PRIOR TO COURT

COMMUNICATING WITH THE LIP

- 1) THIS COULD BE BEFORE PROCEEDINGS ARE COMMENCED OR BEFORE A FIRST COURT HEARING
- 2) IF THE FORMER IN PARTICULAR, REMEMBER YOU ARE PROBABLY TRYING TO NEGOTIATE TO OBTAIN A GOOD OUTCOME FOR YOUR CLIENT
- 3) REMEMBER ALSO THAT WHILE YOUR CLIENT HAS YOU AS AN EMOTIONAL BUFFER AND THE VOICE OF REASON, THE LITIGANT IN PERSON IS EITHER ON THEIR OWN OR LISTENING TO THOSE WHO GIVE THE MESSAGES HE/SHE WANTS TO HEAR

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PRIOR TO COURT

COMMUNICATING WITH THE LIP

1. BY TELEPHONE – MAKE A CAREFUL NOTE OF WHAT WAS DISCUSSED
2. BY LETTER – BE COURTEOUS
3. ENSURE THAT LETTERS ARE WRITTEN IN PLAIN ENGLISH AND AVOID LEGAL JARGON
4. CHECK WHETHER THE LIP WILL NEED AN INTERPRETER/TRANSLATION OF THE LETTER
5. ALWAYS REMEMBER TO INVITE THEM TO SEEK INDEPENDENT LEGAL ADVICE

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COURT

1. ORDINARILY, YOU WOULD BE NOTIFYING LIP OF COURT PROCEEDING, DATE TIME ETC
2. WELCOME TO COVID-WORLD WHERE THE COURT NOTIFIES EVERYONE
3. ALWAYS WORTH CHECKING LIP HAS NOTICE OF HEARING, DATE, TIME AND MANNER OF REMOTE HEARING
4. ENSURE INDEX AND BUNDLE SENT TO LIP IN GOOD TIME

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CHECK WITH LIP BEFORE ANY COURT HEARINGS HOW
YOU AND THEY WILL COMMUNICATE

IF YOU DON'T HAVE A SEPARATE WORK MOBILE
PHONE, BE CAREFUL ABOUT DISCLOSING THE NUMBER

YOU MAY NEED TO BE ABLE TO NEGOTIATE DURING
THE HEARING SLOT SO THINK ABOUT HOW YOU WILL
MANAGE THAT

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The Direct Access Client-

Will have the advantage of counsel at the hearing BUT unless they have counsel who is authorised to 'conduct litigation' you may have been corresponding with the LIP directly although Direct Access Family Counsel who are permitted to correspond with other legal representatives.

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WAR STORIES – LIFE AT THE COAL FACE

Some Anecdotes

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LIP at DRA – refused to engage with Cafcass ‘ everything is no’

Threatens to leave jurisdiction with children

Shouts at magistrates notwithstanding interpreter being present

Such concern to Cafcass that place found at contact centre

Order drafted and sent in to magistrates at court during what's left of
lunchtime adjournment – mother objects and seeks to use interpreter as legal
advisor.....

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Direct Access TOLATA and Schedule 1 Client

uses intermediary Legal Advice Limited Company BUT NOT solicitors firm
Staff are qualified solicitors but do not keep up practising certificates so cannot go on court record.

Other side refuse to engage with them and write directly to client
correspondence confusing as two claim forms issued by mistake!

Service and exchange of documents also a problem – court orders that Direct Access Counsel must be informed of and copied in on all communications to and from the court.

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How can we make things better for LIPS and Direct Access Clients?

Be kind!

Solicitors please mug up on direct access so you what we can and can't do

Courts/HMCTS to provide helpful information to LIPS perhaps when proceedings are issued??

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Good Luck and stay well!