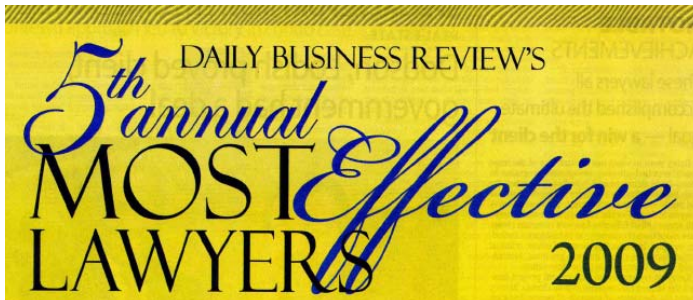


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South Florida attorneys
who scored significant
victories for their clients

Most Effective Lawyers: Personal Injury Finalists Four years of work led to settlement in DCF case

Howard Talenfeld and Tracey K. McPharlin, Colodny Fass Talenfeld Karlinsky & Abate

For law firm partners Howard Talenfeld and Tracey McPharlin, the proposition seemed simple: placing children who are known sexual offenders into a foster home where other foster children reside is a dangerous practice.

But it took nearly four years to persuade a court to recognize that the Department of Children and Families workers who placed two teenage boys with a known history of sexual predation into a home with three younger children acted with deliberate indifference. The workers were not, the lawyers argued, entitled to qualified immunity.

Talenfeld and McPharlin represented the biological parents of the three younger children, who were preschool-aged at the time of the late-1990s assaults, against three DCF employees who handled the placements.



Talenfeld

McPharlin

In January, just weeks after the state lost its appeal in the 11th U.S. Circuit Court of Appeals to dismiss a third amended complaint in federal court, the state agreed to settle for more than \$2.9 million.

"It's the first case brought under the Florida Civil Rights Act in which the problem of exposing foster children to child-on-child sexual abuse is a viable claim," Talenfeld said. "This case paved the way for many other children in the state who are in foster care and who are sexually abused to have a cause of action rather than just be subject to sovereign immunity limits."

Talenfeld said the DCF employees tried to use qualified immunity as a defense and argued that although they knew the teenagers were known abusers, it didn't mean they knew they would abuse the other children in the home.

"We had to prove that they had knowledge that they were exposing the children to substantial risk of serious harm, but didn't take steps to protect them," Talenfeld said. "This case sends a message to all social workers that they have an obligation not to cause or create these dangers."

Though the case was drawn out over a period of nearly four years, it was resolved prior to any deposition testimony being taken, McPharlin said. Indeed, the battle lines were drawn over thousands of pages of records, which the pair had to fight to obtain.

"We spent four years litigating in state and federal court with DCF over record-production issues," McPharlin said. "In those thousands of pages, there was no record of determination of the safety or risk factors [in placing the teens with the other children]. There was no consideration at all."

McPharlin pointed to the pair's tenacity in fighting for the records — along with detailing and documenting everything that they knew should have been in the files but wasn't — as a major reason why they were able to obtain the result for the children.

"I think but for our tenacity and perseverance we wouldn't have gotten anywhere," McPharlin said. "The information was there ... the amount of knowledge they had on these boys and the little that had been done to help them, not to mention the complete disregard for their backgrounds when they were placed, it was all there."

Talenfeld and McPharlin both hope the settlement presses all DCF workers into more carefully assessing and evaluating possible abuse issues when they are placing children — while at the same time realizing they are not shielded from individual responsibility in such placements.

It's not like there aren't concrete protocols to follow, she said.

"Child-on-child abuse is epidemic nationally," Talenfeld said.

"And the fact that we were finally able to get a court to declare that this is the type of danger from which foster children need to be protected is something that I'm sure will help save thousands of children year after year."