



Representation in an Illinois Child Protection Case

Seminar Topic: This material provides an in-depth examination of the process and procedure of representing parents in an Illinois Child Protection Case.

This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.



Copyright © 2018

Printed in the United States of America. All rights reserved. No part of this monograph may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, except for citation within legal documents filed with a tribunal, without permission in writing from the publisher.

Disclaimer: The views expressed herein are not a legal opinion. Every fact situation is different and the reader is encouraged to seek legal advice for their particular situation.

The Apex Jurist, www.ApexJurst.com is
Published by ApexCLE, Inc.
www.ApexCLE.com

119 South Emerson St.,
Suite 248
Mount Prospect, Illinois 60056

Ordering Information:

Copies of this monograph may be ordered direct from the publisher for \$64.95 plus \$4.25 shipping and handling. Please enclose your check or money order and shipping information. For educational, government or multiple copy pricing, please contact the publisher.

Library of Congress Cataloging-in-Publication Data

ApexCLE, Inc.

1. ApexCLE, Inc. 2. Law-United States – Guide-books.
3. Legal Guide 4. Legal Education.



About the Author and Presenter

Rachel Koch is an Assistant Public Defender of Cook County, Illinois. She currently works in the Child Protection Conflicts Division where she represents parents when the state petitions to take their children from their care. Her work consists of all the tools in the civil toolbox to get parents reunited with their children. Some highlights of her work include a trial win for a former Roma refugee who lived in Baltimore and was in Chicago on vacation, his baby rolled off the motel bed, broke her leg and was treated by a biased doctor. Because of her work on the case, he was reunited with his children. Prior to her work for Cook County, Ms. Koch had a solo practice where she represented clients in at all stages of litigation in criminal defense, family law, civil forfeiture, family law, civil and administrative cases; she also worked in private practice.

Rachel attended DePaul University College of Law, where she was a Sullivan Fellow at the International Human Rights Law Institute and an assistant to the late Professor Emeritus M. Cherif Bassiouni. She also attended programs abroad in Costa Rica and Italy, focusing on International Law.

Ms. Koch comes to the law after twenty years of experience teaching both young people and adults in New Mexico, Chicago, and Ecuador; Rachel was inspired to study law while working for a teacher training organization where the evolution of International Human Rights Law is a focus.

Author's Email Address: Rachel.koch@cookcountyl.gov

Author's Mailing Address: 2307 West 21st Street, Apartment #A,
Chicago, IL 60608

Author's Phone Number: 312-576-7132

Table of Contents

Contents

Biography.....	3
Table of Contents	4
Timed Agenda:	5
Before you start.....	7
CP is different.....	7
TEMPORARY CUSTODY (TC).....	7
MAIN QUESTIONS	7
Governing law	8
Hearing v Stipulation.....	8
Parties’ rights	9
COURT FAMILY CONFERENCE.....	10
MAIN QUESTIONS:	10
Governing law	10
Parents’ rights	10
ADJUDICATION	10
MAIN QUESTIONS: Was/Were the Minor(s) Abused/Neglected/Dependent?	11
Governing law	11
Hearing v Stipulation.....	11
Parents’ rights	12
DISPOSITION	12
MAIN QUESTIONS:	12
Governing law	12
Parents’ rights	12
PERMANENCY.....	12
Governing law	12
Possible Permanency Goals	12
OUTCOMES	13
Return Home/Reunification.....	13
Termination of Parental Rights (TPR).....	13

Timed Agenda:

Time	Description
0:00:00	Program Start
0:00:22	Intro to Representation in an IL Child Protection Case
0:03:09	705 ILCS 405/1-2 (1) paragraph 2
0:04:59	Parties and Players
0:08:18	Case Worker
0:10:45	Servicing Agencies
0:13:00	Temporary Custody
0:16:06	Dependency 705 ILCS 405/2-4
0:18:19	Placement
0:21:35	In Order for the Court to Take TC
0:25:43	Stipulation
0:33:29	Parties' Rights
0:37:28	Court Family Conference
0:39:02	Service Plan
0:44:01	Incarcerated Clients
0:46:23	90 Day Trial or Waive
0:47:46	Adjudication
0:54:16	Stipulation
0:57:22	Hearsay Protections
1:02:02	Disposition
1:04:11	Parents' Rights
1:08:00	Visits
1:09:50	Appeal
1:12:20	Permanency

1:13:23	Possible Permanency Goals
1:15:38	Return Home/5 months
1:17:19	Return Home Pending Status Hearing
1:18:24	Guardianship
1:20:14	Substitute Care Pending Termination of Parental Rights
1:24:02	Return Home/5 months
1:25:12	Outcomes
1:25:33	Termination of Parental Rights (TPR)
1:27:25	Consents to Adoption
1:30:06	TPR Trial
1:33:57	Consents to Adoption

REPRESENTING PARENTS IN AN ILLINOIS CHILD PROTECTION CASE

Before you start

CP is different

- i. The law is unreadable and hard to navigate
 - 1. Most important part is 705 ILCS 405/1-2(1) paragraph 2 “The purpose of this Act is to....preserve and strengthen the minor’s family ties whenever possible, removing him or her from the custody of his or her parents only when his or her safety or welfare or the protection of the public cannot be adequately safeguarded without removal.”
- ii. Parties and Players
 - 1. The State’s Attorney
 - 2. The Guardian ad Litem
 - 3. The other parent’s attorney
 - 4. DCP investigator
 - 5. Case Worker
 - 6. CASA
 - a. Court appointed special advocate
 - b. Governing law: 705 ILCS 405/2-17.1
 - 7. Servicing Agencies
 - 8. Foster Parents (if court takes TC, see below)

TEMPORARY CUSTODY (TC)

MAIN QUESTIONS

- iii. Was there Probable Cause to believe the minor was abused, neglected and/or dependent?

- iv. Is there Urgent and Immediate Necessity to remove the minor?

Governing law

- v. 705 ILCS 405/2-7 through 2-10
- vi. Allegations
 - 1. Neglect 705 ILCS 405/2-3(1)
 - 2. Abuse 705 ILCS 405/2-3(2)
 - 3. Dependency 705 ILCS 405/2-4
 - a. Different types of dependency – A, B or C?
- vii. Placement
 - 1. 20 ILCS 505/7 (family placement preferred)
 - 2. 89 Ill.Admin. Code §301.70 (family placement preferred)
 - 3. 89 Ill.Admin. Code §301.80 (Godparents are considered family)
- viii. In order for the court to take TC
 - 1. Probable Cause (PC)
 - a. That the minor could have been abused, neglected or dependent
 - b. This could be shown by almost any form of evidence but is often based in a hotline call to DCFS
 - 2. Urgent and Immediate Necessity (UIN)
 - a. To remove the minor(s) from the home
- ix. Protective Orders
 - 1. 705 ILCS 405/2-25
 - a. Alternative to TC when the State wants to monitor but no UIN
 - 2. 705 ILCS 405/2-20
 - a. In lieu of adjudication (see below, section IV)
 - 3. Violations of Orders

Hearing v Stipulation

- x. Hearing
 - 1. Best if

- a. Documents or witnesses available to refute allegations
- b. Witnesses to call
 - i. Child care providers to show minimum standard of care or that a safety plan was created
 - ii. Intact Worker
 - iii. Treatment providers such as substance abuse counselors, therapists, domestic violence counselors
- 2. Drawbacks
 - a. No Hearsay protections
 - b. Judge hears everything and can't unhear it
 - c. VERY low burden of proof
- xi. Stipulation
 - 1. Best if
 - a. Drug exposed baby or other irrefutable evidence presented
 - b. You need time to get documents and witnesses
 - c. You want to limit what is said about your client
 - 2. Drawbacks
 - a. Though you are stipulating only that the investigator (or other witness) would provide a limited amount of testimony, the judge will likely take TC because of the low burden of proof
 - b. It's frustrating for clients
 - c. Both parents (or a guardian) must agree in order to avoid a hearing

Parties' rights

- xii. Parents entitled to different attorneys
- xiii. Any party may request a paternity test
- xiv. If TC is taken
 - 1. Parents entitled to bus passes

2. Parents entitled to visits
 - a. Visits usually start supervised – ask for supervision by DCFS or its assigns
 - b. Mothers of newborns should request frequent, specific visitation, especially if breast feeding
3. DCFS must pay for services recommended (see below section III)

COURT FAMILY CONFERENCE

MAIN QUESTIONS:

- xv. What services are recommended to correct the conditions that brought the case into court, so that the parents can be reunified with their children?

Governing law

- xvi. 705 ILCS 405/2-10.1
- xvii. IL S. Ct. Rule 942
- xviii. 705 ILCS 405/2-14(b) (90 day trial right or waiver, see below)

Parents' rights

- xix. Integrative Assessment
- xx. Service plan
 1. Within 45 days of placement
 2. Specifically tailored service plan
- xxi. More on visitation
 - a. Bates
 - b. Incarcerated clients
 - c. Grandparents visits
- xxii. 90 day trial or waive

ADJUDICATION

MAIN QUESTIONS: Was/Were the Minor(s) Abused/Neglected/Dependent?

Governing law

- xxiii. Prima Facie cases: 705 ILCS 405/2-18(2)(a)-(k)
- xxiv. Definitions of Abuse & Neglect; 705 ILCS 405/2-3
- xxv. Definitions of Dependency: 705 ILCS 405/2-4
- xxvi. Other evidence: 705 ILCS 405/2-18(3)-(5)
- xxvii. Findings & Adjudication: 705 ILCS 405/2-21
- xxviii. Orders of protection in lieu of trial: 705 ILCS 405/2-20

Hearing v Stipulation

- xxix. Similar to TC but with hearsay protections
- xxx. Hearing
 - 1. Best if
 - a. Documents or witnesses available to refute allegations
 - b. Witnesses to call
 - i. Child care providers to show minimum standard of care or that a safety plan was created
 - ii. Intact Worker
 - iii. Treatment providers such as substance abuse counselors, therapists, domestic violence counselors
 - 2. Drawbacks
 - a. Judge hears everything and can't unhear it
 - i. Information heard at trial may affect judge's posture at disposition
 - b. Burden of Proof
 - i. Higher than TC but still not high
- xxxi. Stipulation
 - 1. Best if

- a. Drug exposed baby or other irrefutable evidence presented
 - b. You want to limit what is said about your client
2. Drawbacks
- a. Frustrating for clients
 - b. Both parents (or a guardian) must agree in order to avoid a hearing

Parents' rights

- xxxii. Hearsay protections
- xxxiii. Right to a hearing

DISPOSITION

MAIN QUESTIONS:

- xxxiv. Is/are the parent(s) FIT, WILLING AND ABLE to have the minors returned ON THAT DAY to their care?

Governing law

- xxxv. 705 ILCS 405/2-22
- xxxvi. 705 ILCS 405/2-23

Parents' rights

- xxxvii. Court report
- xxxviii. Service Plan
- xxxix. Right to appeal

PERMANENCY

Governing law

- xl. 705 ILCS 405/2-28

Possible Permanency Goals

- xli. Return Home/5 months
 - 1. Parents making substantial progress in services
 - 2. Visitation consistent and appropriate
 - a. Unsupervised Visits
- xlii. Return Home/12 months
 - 1. Parents making some progress
 - 2. Visits occurring
- xliii. Return Home Pending Status Hearing
 - 1. Little or no progress
 - 2. Few or no visits
 - 3. Parents have 9 months to get it together
 - 4. Frequently goal changed to TPR
 - 5. Only available within 9 months of adjudicatory hearing conclusion
- xliv. Guardianship
 - 1. Minor with a family member or fictive kin
 - 2. Minor is at least 12
- xlvi. Independence
 - 1. Minor must be at least 15
- xlvi. Home Environment Not Appropriate
 - 1. Minor needs services s/he can't get at home
- xlvi. Substitute Care Pending Termination of Parental Rights
 - 1. Parents not making progress

OUTCOMES

Return Home/Reunification

Termination of Parental Rights (TPR)

- xlvi. Consents to Adoption
 - 1. General Consents
 - 2. Specific Consents
- xlix. TPR Trial
 - 1. Fitness
 - a. Governing law: 750 ILCS 50/1(D)
 - 2. Best Interest