



*Juvenile Law: Pretrial Issues
While Representing Parents
in a Child Custody Case*





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About the Presenter

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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. She is also an Adjunct Professor at DePaul University College of Law where she has taught Education Law and Policy and Evidence. 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.

Ms. Koch 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.

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Course Description

This course will examine important aspects of a Child Protection case that come up before trial/adjudication. The course will mostly address advocacy for parents but can also be useful for any attorney representing another party in a Child Protection case. Topics include: pretrial motions, placement issues, companion criminal cases and communication with placement agencies.

Course Presentation

This course provides a fundamental overview of pretrial issues when representing parents in a child protection case.

This course provides practical guidance and a discussion on best practices regarding representing incarcerated clients, distance and timing problems and the impact upon child protection cases.

This course provides practical guidance and a discussion on best practices regarding hearings and stipulations, burden of proof, document, witness and evidence presentation and parental rights to proper representation.

This course provides practical guidance and a discussion on best practices regarding family conferences in court, recommended to correct the conditions that brought the case into court, so that the parents can be reunified with their children, service plans and pretrial preparation.

This course provide a base of skills, knowledge and perspectives regarding the variance in child protection statute and rules in different jurisdictions and states, the use of appropriate forms, variations in courtrooms, client interview techniques and the use of social media, logs and client management.

This course will provide a comprehensive overview of the laws and strategic considerations in adjudications, stipulations, termination of parental rights, visitation and communication with incarcerated parents and paternity tests.

This course will provide a comprehensive overview of the laws and strategic considerations in temporary custody situations, probable cause standard, abuse, neglect and dependency law, protective orders and alternatives to temporary custody.

This course provides an intellectual foundation and introduces a set of learning skills essential for success in the legal profession. The course will provide opportunities for careful reading, for creative and critical thinking, for oral and written communication, and for engaging with others in a shared conversation about pretrial preparation in child custody cases.



Course Material

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.



Course Learning Objectives and Outcomes

This course is designed to provide the following learning objectives

The ability to understand the relevant state and federal law related to pretrial issues when representing parents in a child protection case.

The ability to recognize and describe best practices regarding representing incarcerated clients, distance and timing problems and the impact upon child protection cases.

The ability to identify and distinguish best practices regarding hearings and stipulations, burden of proof, document, witness and evidence presentation and parental rights to proper representation.

Participants will develop an understanding of best practices regarding family conferences in court, recommended to correct the conditions that brought the case into court, so that the parents can be reunified with their children, service plans and pretrial preparation.

Participants will gain practical skills in the area of understanding child protection statute and rules in different jurisdictions and states, the use of appropriate forms, variations in courtrooms, client interview techniques and the use of social media, logs and client management.

Participants will learn to critically evaluate and analyze the laws and strategic considerations in adjudications, stipulations, termination of parental rights, visitation and communication with incarcerated parents and paternity tests.

The ability to understand the duties, roles and responsibilities of counsel in situations involving representation of parents and pretrial preparation for child custody cases.

This course will provide a comprehensive overview of the laws and strategic considerations in temporary custody situations, probable cause standard, abuse, neglect and dependency law, protective orders and alternatives to temporary custody.

Timed Agenda:

Presenter Name: Rachel Koch

CLE Course Title: Juvenile Law: Pretrial Issues While Representing Parents in a Child Custody Case

Time Format (00:00:00 - Hours:Minutes:Seconds)	Description
00:00:00	ApexCLE Company Credit Introduction
00:00:20	CLE Presentation Title Juvenile Law: Pretrial Issues While Representing Parents in a Child Custody Case
00:00:32	CLE Presenter Introduction
00:01:24	CLE Substantive Material Presentation Introduction
00:01:18	Practice Pointers and Recommendations
00:12:56	Juvenile Law: Pretrial Issues While Representing Incarcerated Clients
00:46:49	Adjudication vs. Stipulation
01:02:51	Court Family Conference
01:16:13	Juvenile Law: Pretrial Issues Wrap-Up
01:16:35	Presenter Closing
01:17:05	ApexCLE Company Closing Credits
01:17:10	End of Video



Course Material

Before you start

Don't try to read the statute as you would other areas of law – it's unreadable

Focus actions you can take, from filing motions to providing a log for visits, services or communications.

GENERAL POINTERS

Variations

- Be aware of the wide variance in Child Protection statutes and rules from court to court, jurisdiction to jurisdiction, state to state.
- Use appropriate forms
- Check out your courtroom
- Observe other cases
- Talk to the folks who live there: ASAs, GALs, PDs
- Talk to the clerk and court coordinator about court specific rules or preferences

Client specific tips

- Meet with client
- Social Media
- Stay OFF in general
- Edit/delete old posts
- Can be used against client even if not about minor
- Logs
- Provide to client for visits, services, communication
- Check in regularly to stem issues
- It's gonna be a minute.....
- Can be years
- Court appearances feel infrequent, and frequently get random continuances
- Not a criminal case or a divorce case



- Don't focus on other parent or foster parent or other people they know who have had kids in the system
- Recognize the system is systemically problematic: racism, classism, etc – focus on what we can do something about

INCARCERATED CLIENTS

Incarcerated clients – incarceration for reasons unrelated to CP case

Ask if s/he wants to be writ

- Distance
- If county and nearby, no major commute
- If IDOC and a distance – major commute and issues
- Brought weeks early
- Kept in Stateville or other facility
- Overcrowding – solitary
- May lose spot in classes that can help
- Timing
- Client out soon? Participation worth the trip
- Long sentence? May not be worth it

TALK ABOUT ADJUDICATION/STIPULATION

- If client doesn't want to come back, get permission to stip

TPR considerations

Be aware that incarceration may be grounds for termination of parental rights in two to three different ways: a parent may be found unfit if incarcerated at the time the termination petition is filed, if repeatedly incarcerated or if found to have not made reasonable efforts or progress during specific time frames. 750 ILCS 50/1.D (s)(i) and (m) respectively.

VISITS, COMMUNICATION, services

- Varies
- Other forms of communication
- Do everything

Incarcerated clients – incarcerated for reasons related to CP case

- Contact criminal attorney
- Issues with IA and stip
- No contact orders for visits

Misc issues initial issues

- Paternity test
- Parents together vs. separate

TEMPORARY CUSTODY (TC)

MAIN QUESTIONS

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

Is there Urgent and Immediate Necessity to remove the minor?

SAMPLE PETITION

- Find the law, facts
- Response!
- 21 days from the petition. Cook County Circuit Court Rule 19A.2(B).
- Companion criminal case?
- Specific response or general denial. Cook County Circuit Court Rule 19A.2(A).

Governing law

- 705 ILCS 405/2-7 through 2-10
- Allegations
- Neglect 705 ILCS 405/2-3(1)
- Abuse 705 ILCS 405/2-3(2)
- Dependency 705 ILCS 405/2-4
- Different types of dependency – A, B or C?
- Placement
- 20 ILCS 505/7 (family placement preferred)
- 389 Ill.Admin. Code §301.70 (family placement preferred)



- 389 Ill.Admin. Code §301.80 (Godparents are considered family)

Fictive kin

In order for the court to take TC Probable Cause (PC)

- That the minor could have been abused, neglected or dependent
- This could be shown by almost any form of evidence but is often based in a hotline call to DCFS
- Urgent and Immediate Necessity (UIN)
- To remove the minor(s) from the home
- Protective Orders
- 705 ILCS 405/2-25
- Alternative to TC when the State wants to monitor but no UIN 2. 705 ILCS 405/2-20
- In lieu of adjudication (see below, section IV)
- Violations of Orders

Alternatives to propose

- Remove the perpetrator
- Get an OP against abuser
- Alleviate the alleged problem
- Home issues
- Dirty house
- Electricity
- Dangerous conditions

Hearing v Stipulation

- Hearing
- Generally
- State carries Burden
- Low burden at TC
- All minors in home can fall under one allegation d.
- Best if
- Documents or witnesses available to refute allegations
- Witnesses to call
- Child care providers to show minimum standard of care or that a safety plan was created
- Intact Worker

- Treatment providers such as substance abuse counselors, therapists, domestic violence counselors
- Drawbacks
- No Hearsay protections
- Judge hears everything and can't unhear it
- VERY low burden of proof
- Stipulation
- Best if
- Drug exposed baby or other irrefutable evidence presented
- You need time to get documents and witnesses
- You want to limit what is said about your client
- Drawbacks
- 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

Parties' rights

It's frustrating for clients

Both parents (or a guardian) must agree in order to avoid a hearing

Parents entitled to different attorneys

Any party may request a paternity test

If TC is taken

- Parents entitled to bus passes
- Parents entitled to visits

Visits usually start supervised – ask for supervision by DCFS or its assigns

Mothers of newborns should request frequent, specific visitation, especially if breast feeding

DCFS must pay for services recommended (see below section III)

COURT FAMILY CONFERENCE

MAIN QUESTIONS:

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

705 ILCS 405/2-10.1

IL S. Ct. Rule 942

705 ILCS 405/2-14(b) (90 day trial right or waiver, see below)

Parents' rights

- Integrative Assessment
- Service plan
- Within 45 days of placement
- Specifically tailored service plan
- More on visitation
- Burgos
- Grandparents visits
- 90 day trial or waive

Misc. Pretrial CP Issues

Indicated reports

- Based on current allegations
- Appeal
- Timing
- Stays
- Old ones
- Check time frame for appeal

Reasonable Efforts



Course Computer Generated Transcript

The following is a computer generated voice recognition transcript of the video presentation. This is an automatically generated transcript and not a verbatim transcript of the program. This is provided only for general reference and there may be portions that have not been accurately computer generated. If there are any inconsistencies, please refer to the video for clarification.

Juvenile Law: Pretrial Issues While Representing Parents in a Child Custody Case Transcript

I have been practicing law for 12 years I was in education before that I did private practice for four years covering a variety of areas including criminal defense as well as civil litigation.

For the last eight years I've been at the Cook County Public Defender's office in the child protection conflicts division representing parents and child protection cases and trying to talk to you about today the first got some pointers for before you start the most important one is that this is a very different area of laws and criminal law even though as I said before I work for the public defender and did most of the work is criminal defense

This is Child Protection statute I'm mostly and at least I can say so in Illinois unreadable so it's not going to be like some other cases where even instead of civil litigation that we find a statute because it's Incorporated by juvenile delinquency and adjudication as well as proper tension if it doesn't flow it's very hard to find kind of what you need I try to provide for you hear the pieces of the statutes that you mean so my suggestion is to get an overview of the flow of a case in child protection and then find it like a bull statue when you did the second winter I want to give before we start is that you should be focusing rather than meeting the statute on actions that you can take that will help your case right from the job so one of the main things I need to be providing a number of practice tips in terms of being comfortable with your client and the client and comfortable situation you can also file motions and we will discuss motion practice as well these are some things concrete things to focus on so that your client doesn't feel like so much time is passing or that you don't feel like wait that's why I'm so confused I don't know what I should be doing is that there's quite a bit of diarrhea from County to county in Illinois or practicing in County's jurisdiction and even from courtroom courtroom within the same county so make sure that you are aware of Court specific rules and also Court



specific preferences so one of the suggestions that I will give you is to find out what courtroom you're going to be in and hang out there a little bit talk to the state's attorney talk to the guardian ad litem talk to the public defenders in that courtroom they will have the best idea of what the judges preferences are for the poor coordinators preferences or the proof preferences so these are all folks in the courtroom to get to know a little bit and find out what they like and don't like

Practice Considerations and Tips

General pointer are some specific tips I want to give you first meet with your client get to know your client and try to build some trust with your client most importantly off the bat you want to communicate that this is not Criminal Court that there's not a criminal penalty we will discuss later when it's possible that your client has a companion criminal case so and we will discuss in detail incarcerated clients for the parents who is not in car make sure that you're clear that is not Criminal Court secondly some very important tip for your client and anyone involved in the case family members friends stay off social media not to not post anything about anyone involved but more particularly the minor child I strongly recommend you tell your client to go back and edit or delete old posts where they may have trash talk to your parents or say something problematic I trust that you will find those and it will come back to lots of clean up the social media even if they're not specifically they can still be used against your client third General tip that I mentioned before was logs do you want to make sure that you provide your client even if they're not any kind of official log with with something for them to track their services their visits and communication many time period will complain that they attempted to reach someone important involved in a case such as initially perhaps the investigator later on the caseworker assigned to family reunification frequently do you will hear about it tempts to reach one of these folks and your client in ability to do so they need to keep track of this if they claim that they tried to call and didn't even if they did leave a message or a lot of time there's glitches in communication people don't receive messages it happen but if there's a record of doing that that is preferable cuz you're clearly outlined and times when he was attentive communication on if your client has access to email that isn't that preferable because there's a time stamp on it but if that's not possible just regular old pencil-and-paper

I find additionally Summit parents are coming to my house or texting case with a substance abuse or dependence on alcohol dependency situation those parents right off the bat I highly recommend just tell them to start going to 12



and provide a log for them where you have to sign in at age the type of meeting the time in time out until 4 and then someone charged for that that's just an immediate step to take so that the parents can feel that they're doing something you have a record of them doing something you have something to enter into at an initial hearing 4th client-specific tip is in your initial meeting for your second meeting you're going to need to provide some sort of in over here and where the steps are along the way the major pieces of it and that it's going to take some time it can be very frustrating and upsetting for parents when it's going to feel too then like it's taking forever even just to get an initial case worker assigned to the family sometimes can take two months sometimes you don't like too much and that's an issue so that you want to just put it out there on Front Street this is what's going on it's going to take a minute as I said earlier you want to really be clear that this is not a criminal case but also that it's not a divorce case for a custody case for a child support case just a little background can you clear about I'm Jamaican into the situation with a parent who claimed that they either withheld or been denied visitation previous you to be there not paying or not receiving child support so just to be clear in a different area of law but those two things are not allowed to be linked in the eyes of the law or depending on each other you can't say okay I'll pay child support if you let me see my kid and can't say you're not going to your speed until you can tell support this is a separate area of Law and there is a constitutional infringement and deprivation which is what triggers my clients right to have a public defender just had kind of get it out of the way that there's a different burden of proof there's different parties involved different all around from type of course they may or may not have experienced or heard about or seen on television I'm in the last kind of General pointer I want to be clear about and I do feel that it's important to make this clear to clients to that there are huge problems in our judicial system and some of them have to do with race and some have to do a class some have to do with gender and sometimes they are intertwined and that that's real decline is imagining it that you as the representative everything concrete that you can to represent your client zealously involving is that particular case that your work will likely not be taking a nap to smash music demyx problems but that you are aware of them and your client can feel safe knowing that you're not not seeing that contacts that their case is it so my suggestion for when those issues pop up in the well that you helped me Focus your plan on concrete actions that your client can take that you can take on tequila with specific aspects of their case all the while acknowledging yes that is real and we're going to focus on something we can do something about.



Incarcerated Clients

Now we're going to talk about pretrial issues when dealing with incarcerated clients so the 1st portion of this is I'm going to talk about when you have an incarcerated client who is incarcerated for issues unrelated to the child protection case first most important is that you ask your client if he or she or they wish to be rich in to Port from the weather across rated Department of Correction I am your father. Jail is not too far from the port where we have child protection cases so it's not that big of a deal for them to get rid of when a coin is incarcerated even if it's been somewhat nearby they typically bring in very early which is a facility that is very crowded there are times when you are my aunt might have to be in solitary confinement for possibly a week or so. That usually happens with face already involved in some sort of services for classes on at their facility. College class today to get in and they can either be in the class or on the waiting list and if they are absent for. Of two weeks they will lose their spot so I asked her client about getting rid of him and then when you're going over the general overview of the lifespan of a child protection. You can focus on the most important hearing days such as you. And perhaps the permanency hearing could be held in the same at the same time if they want to present for that it is mandatory to have an incarcerated client it may be ready termination of parental rights trial to make sure that they know ahead of time that they have a choice about things they don't now the other consideration when you have a client who is incarcerated for reasons unrelated to the reason the child protection case in there is need to get it done from them and this is also something that you can look up on the Illinois Department of Corrections website on there usually two different dates one of them when they're sentence will be completed sometimes if it comes close to the rib pain left up there out on so you don't want any overlap with it went within a lot of money it's not worth it for them the second thing is that the current needs to be aware even if they're incarcerated for reasons unrelated to the toddler typing that there are considerations down the line with already and it's kind of termination of parental rights I'll pick you up 15 mm and the reason that they may be incarcerated 10e focus of the grounds for on seconds so make sure that the parent is clear about that right off the bat there at a huge disadvantage of these incarcerated another aspect to having an incarcerated client when it's unrelated to the child protection case is that the services that are recommended by agency to come in and talk about later in the service plan parents get judged on are unlikely to be available and in pain move away in their hands on an earlier if there's a substance dependency or alcohol dependency or abuse issue 12-step program that are also available in most facilities even if your plane doesn't have an issue with some substances or alcohol I highly encourage you to hurt your



client has participated in these meeting cuz they do have a lot to do with kind of dealing with various blows that life can feel you and him being an adult in the world so I can't hurt other classes to that again are specific to be the parent that they can focus on such as vacacional classes history classes getting a variety of things and it really varies from facility to facility but again just to encourage your client to do everything that you do when you have a client who is incarcerated for the reason the kids came in I think the most important contact you can make besides contact with your client is there criminal defense attorney so you need to have some clear communication about that case where things are on how things are looking and want to be very careful to not get on that attorneys to close until some cases that talk about later they're important part of the case such as a social history and evaluation of each of the parties to the case so that the agency can recommend your services that social history might wind up being problematic for your clients criminal case especially if the facts are generally when I have clients were incarcerated for the reason the kids came in I let involve smell that my client will not be participating in like and graded assessment or any other kind of assessment or conversation that is memorialized that could be potentially incriminating the second issue that I want to talk about in regards to parents who are incarcerated for the reasons that case came in is typically a child if issue is deemed a victim there are just as a matter of practice usually a no-contact orders issued by the criminal charge at work no contact orders are a little tricky to get around or over house roof on a trying to get your client to visit so there's usually something at habitation Court you will want enter a visitation order or at least make a motion for visitation order that essentially says your judge is okay with visits as long as it doesn't contradict what the criminal judge said that because usually the judge who issued in no contact order is not going to be in Maine Criminal Court Judge my house so I tried it again this is why the ocean is between a criminal defense attorney in yourself so that you can kind of work with that other returning to make the appropriate motion feel free to be creative about it but you're mean on concern is getting your client some kind of visit if there's a no-contact order that means no contact and one of the other pieces around visitation with incarcerated parents is that their new ways that are developing of visit obviously FaceTime you find a cell phone in prison but somebody does in a lot of prison and Facilities now have a video conferencing technology so that you can have a video visit, with a child and of course there's old fashioned ways as well but see what's available I'm in terms of phone and video on for your client and then two other kind of miscellaneous initial issues that your client who's incarcerated should know that typically somebody's going to ask for a paternity test if the parents were not married at the time of conception when your client is incarcerated there is usually someone in house or someone out of house who



is going to come in and take care of that different facilities have different options as far as paternity testing in Cobb County that are only available to days of the week and just in the morning so again this is part of what I talked about initially getting to know the courthouse getting to know the courtroom that's one of those pieces of information you want to have right off the bat the second cheese has to do with something also a little person, which is getting a sense of its appearance are together or separate and this pertains to your incarcerated parents but specifically for incarcerated parents want them to be clear on if they are together as a couple intending to raise the child or children as a couple or perhaps when you're incarcerated client gets out of jail then your client is going to be very dependent on what the other parent is doing in terms of their services and visits and if they're making progress so those are some man key issues to think about when you have a client who is incarcerated.

Temporary Custody Hearings

Next I would like to talk about is the temporary custody hearing this is the first stage generally in the first aspect of a temporary custody hearing I'd like to discuss the most important is the burden of proof in a child protection case at the third stage Buckley or the adjudicatory hearing fancy term for trial there is a standard of more likely than not and is that standard is very different from what the plans are typically been understand to be a burden of proof which is a criminal burden of proof Beyond A Reasonable Doubt so if at the third stage you have a 1 feather in an equal yes there was abuse or neglect know there was not kind of contest and then the one Southern rule means there's going to be finding on the yes there was abuse or neglect side burden of proof isn't defined in the law a temporary custody but it's basically on the floor if you can talk to your clients and kind of cats have them have a picture of judges in child protection are typically hearing. Difficult sometimes terrible circumstances and they are generally can is want to be more safe than sorry typically your client will likely have heard about some of the significant so it's a very low burden of proof and unlike an adjudicatory hearing there are no hearsay protections so later on I'm going to talk about this is critical decision you will make with your client of whether or not it makes sense to have a full hearing where you call witnesses or a trick to doing or stipulation to take into consideration hearsay protection or the lack of them a temporary custody is one of those considerations for you now the two main questions that will be answered at a temporary custody hearing our number one was their probable cause to believe the minor the number to is there urgent and immediate necessity to remove the minor children or child from their home right now the first piece of probable



cause chances are there is probable cause it'll literally could be anything if you take into consideration what the rules and regulations are for DCFS regarding who ran for who must make a hotline call it's very loose and so anyone can make a hotline call in some people like medical professionals petition and teachers specifically must make hotline calls in certain situations so kind of a non-issue it is very unlikely that you will prevail arguing with no probable cause so the main focus is going to be on the Urgent and immediate necessity car the first thing you're going to want to do is look at the petition petitions going to have as a pet ER in re or in regards to and that the minor child or children docket number and that caption is of course something you're going to want to make note up for your future motion then you're going to have the allegations you at the top of the position abbreviation of what those allegations are in your hand out of the outline and the accompanying law you have in Roman numeral 2 section c and then your statutes and outfit have the specific language of the lot that wall will be present on your a copy and there will be the allegation what the statute says that means gray sofas neglect due to an injury of environment it'll stay clean and then I'll be a paragraph of back to underlie that allegation specifically usually sit there are multiple allegations and they're frequently are usually with neglect you do an injury of environment you've got also abuse in that there was a substantial risk of physical injury there's two other end of the paragraph of fast that underlie those allegations is typically the same and copied and pasted it and it's usually something that the conclusion in the accompanying packet you should get from the Department of Child Protection investigation on that was the reason for taking protective custody of the minor child or children this is all what happened before you got this step paper in front of you so the paragraph of bat is usually as I copied and pasted from that what I'm going to call the TCP packet of information and that's what you wanted hunter overview with your client what is very important to stress and I will get into this a little later is that paragraph of bats and whether or not used to be late or leave.. Paragraph of Act was in fact what investigators uncovered that is what the investigator would testify to at a potential. You are not asking your client to accept that paragraph As troops so they may say they may say in the the family has a history of domestic violence and your client may say wait a minute there's not that's why that's not true they're making something up you are not as ringing that they have a history of domestic violence what you be agreeing to do with that that's what an investigator with testified to or that's what somebody else would testify to so truly important if it's like it's a nuanced view point but it's crucial that his client understand that the information you're receiving is the result of somebody else's investigation you're not putting it out there as the truth and again this is another way to distinguish and it is important to do for a client along the way between a civil case as child protection is and it



from in Cook County there is a rural Cook County Circuit rule that says that you are to respond to the allegations in the petition this is another reason to get to know your individual courtroom honesty Kerman whether this is typical practice or not response for General denial the rules around that are included in your materials but the main thing you want to really is what's being alleged and try to go over with your client not in an accusatory way but what what is this piece about when it says here that it was a. Incarceration what what was that it says here that you didn't go to school for a year what was that about how to get that information from that to 942 Satori Bassett as I said the governing law how abuse neglect and dependency is provided for you and to pack it the main thing I would ask you to focus on is that in competition lot there are typically factors in determining later on the best interest of the minor but even in defining how do you say you'll see from case law that is typically a case-to-case kind of basis most of the language in around was a child abused or neglected does have to do with factors that are taken into consideration in making that determination so I encourage you to petition for review the language of the statute as it's defined and then we'll get some cases that are specific to the kind of abuse or neglect your looking at I will briefly discuss dependency but before I do kind of specifics I'm talking about in abuse and neglect allegations I will give an example with due to an environment very broad spectrum of possibilities example would be in a petition and that the conditions of the home or uninhabitable then you need to dig into what is that mean that garbage around is that there was no heating or electricity is it that there were space heaters and sores on top of that desk without the typical single sign-on get down to the specifics of it with her food in the refrigerator that type of thing so in addition to finding out the details. Robinson the system you also want to find out what else was going on in terms of the environment by that the allegation has to do with any potentially dangerous environment you want to date right away for awhile what was not a dress right so okay maybe there was a place for the clothes and what was their food in the refrigerator by so to balance it out the dependency is not typical but if it's possible if you see an inkling of a pencil for dependencies I strongly recommend arguing that because there's less of up I'm honest on the parent with dependency the first kind of dependency is in the Statue of this is 705 ilcs 405 2 - 4a in the car with an MPA neither parent was around for the child parent to this can be that they were both dead they were both incarcerated this can be one was something like that it says someone unusual dependency he has to do with a physical or mental disability of one of the parents to this would be a situation where if a parent was the gas was hospitalized for receiving treatment or physically was unable under whatever circumstances of school buy food for that child until for the best kind of dependence even hungrier Miami otherwise known as no-fault the typical time allocation when you have a teenager that is



so I'm probably has so many problems it is beyond the parents of bility to anything that that child that they are done with dependent on the stage to help them and typically this is kind of a minor child who represents a danger to him or herself and two parents and potentially February this is very clearly laid out a no-fault dependency and that you don't have the heels or the facility or whatever is the money sometimes to to care for the child the child has moved above and beyond what you can provide no fault so that is overall a bit about the governing law there's a section in your outline regarding placement and they talked about for just a minute and you have in your outline administrative regulation so you can look them up yourself but the important thing to remember about placement he's one of the first issue to deal with is that family placement is preferred so family fortunately has been abroad in 2 and its definition to include what term fictive kin what is is a parent has the ability app for temporary custody hearing or at any point before or after to deem someone Family Insurance specific to a religion or whatever but that's the language in that's being used that you can gain that person family now what's important to remember for your client is at the touch of you someone who can have a background check doesn't have a criminal background doesn't have a history with Department of Child and Family Services now I'm going to talk next about what the specifics are and protective orders that are essential way to Stave off having a temporary custody hearing and there are two different types I'd like to discuss and both are found in the same statute section 705 ilcs 405 2 - 255 + 2 - 200 2 - 2/5 otherwise known as a 2/5 order is like an alternative to temporary custody so this is where there is probable cause an immediate necessity to remove the Maya from the home this is something going to happen again as an alternative to temporary custody there's also 2 - 200 otherwise known as a 220 and this is in lieu of adjudication and I'll talk about this a little later like this does not preventing me for a temporary custody hearing and the critical decision you as a representative as to whether or not you want to have a beer. Witnesses or a written hearing or situation now before I get into doing a hearing versus a stipulation I just wanted to go over a few more Alternatives that you can propose on as a representative of to get to one of these kind of protective order situations in lieu of. I'm one of them is that if there is an allegation having to do with a specific perpetrator such as physical abuse allegation excessive corporal punishment for something to do with domestic violence you can propose to remove the perpetrator. The perpetrator is your client's alleged perpetrator you can propose that as well that if that person removes themselves and that's the danger from the home then that alleviate need to remove the children from the hall and that is preferable you can also propose on this is if you have been on perpetrator getting an order of protection against the alleged perpetrator perhaps or as if the perpetrator does living home that's another that's another



option I mentioned a dirty house before call Ina Garten injuries environment case lighting proof that those Necessities for home or present or that doors on conditions that brought the case in has been removed as conditions may your client that with that and by the way back from 2 a.m. witching they're going to want to use regularly and get you that's a reason the case came in had to do a certain condition and that the client's UT and the job of the court is to correct the conditions that brought the patient organic there are possible vanities and possible alternatives to propose in the temporary custody phase on the child protection case that might only be to go on a typical by track through all of the steps let's talk about the critical decision of having a full hearing will you call witnesses vs. if you're waiting or underlying condition solely for the purpose this is a decision you want to make with your client but of course you can advise them as to which one you think is better so once you had an opportunity to review the facts in the petition hopefully at least have a cursory look up a pack of information you would be you will want to do a full hearing will you call Whitney there's only under certain circumstances as I mentioned before at this type of hearing you do not have everything, said she heard that he said she said that they texted and put on Facebook that and whatever you want to do for not being able. Fun hear something once you hear it and that's what you're thinking about in terms of what the judges. For for hearing recall Witnesses I would recommend doing this if you have a document or witness is there available to refute the allegations remember is a very low burden of proof this is a mistake. It is the state responsibility to show if it's probable cause and Urgent and immediate necessity in this case you also want to remember that there may be an allegation as to abuse of one particular child but almost always all the other children in the home will fall under an allegation because his siblings do an allegation that there was abuse against the sidway so if you have a document or witness is available to do Rackley Roofing allegation anfsa kind of witnesses you're going to want to call first want to call any childcare providers for teachers to show a minimum standard of care and by the way that's what's required at top of your crime is not required to win any awards at the year the minimum standard of parenting so if there are if you are able to refute the allegations and think of people come in to stay there is minimum standard of care or better it was the folks you're going to want to call another witness you will want to call it a temporary custody hearing is if there was a situation that was dangerous but they are a dangerous person a person who presented the risk of harm time or a condition of the home perhaps your client made a safety plan doesn't have to be like officially signed and so forth but just a plan to keep your children. Call whoever was involved with kids with Grandma and Ginga call Grandma to say they planned it ahead of time



Watch the kids I want to do an intervention or less intrusive level than Court involving the condition or dangerous as you say. So for if it looks like the worker is going to be positive witness for the clients so that worker definitely sing a lot of negative things about your client will you have no protection a lot of cases coming to Child Protection as I mentioned earlier because I have a dependency or Reliance bar or abuse of alcohol or drugs, it could be without a parent has made attempts to get treatment and so they're kind of witnesses you're going to want to call do they have a full hearing our folks that were involved in this statement a counselor or therapist is ideal if there's domestic violence allegations sometimes you'll have a domestic violence counselor or someone who works at a shelter to show that the parent didn't see it for themselves and their children Dragon X2 doing a full hearing as I mentioned before everything comes into evidence are there alternative at temporary custody instead of bringing that all the facts underlying petition are true and by the way I like to tell my client it's kind of like if the investigator said in the packet that the moon was made of green cheese you can agree that that's what he or she would testify to you don't have to agree that that's true it's kind of ridiculous comparison but it helps it helps draw that distinction so a situation is fast in the following circumstances first if you have an unrepeatable allegation such as a drug-exposed when you see that medication chances are you're also going to have in your packet some kind of medical records indicating that mother and for the baby tested positive for X Y or Z dubstep now take a little note in here and courage in Illinois to really dig deep into some of the changing laws around a cannabis or marijuana so if there was a positive test for one of these substances obviously picking me real hard to get around doing any kind of drugs or alcohol or smoking cigarettes when your pregnant but because of the changing laws around us is classified as what you don't want a lot of people coming talking to you about a lot of other people talking about how much does your client was being that is not helpful situation if it looks like you have a potential to Prevail attitude acacian a lot of medical records and potentially even hire an expert other aspect wrist equation that is important is when you want to limit what's being said about your client it's a really good way to kind of bracket just the facts and the petition that's what the judge has been here sometime at temporary custody hearing and do a situation they will just a you know where stipulating to paragraph 5 in the petition sometimes it's painful for your client to hear about their actions that will potentially harmful to their children so that's ideal if you just a paragraph that it is very likely when you're doing a situation that the judge is going to ask the temporary custody be taken of the minor one of the really important things to talk to your client about is the language of custody there used to hearing custody is like if parent has signal physical custody temporary custody and at age indication when they talk about custody



they're talking about on paper who's kind of in charge of a child you really want to draw that distinction because it can be very alarming when clients here wait like my child going to go into some sort of working-age or something like that, can be scary and like I said it's frustrating for clients to hear please pieces of the investigation that the worker got it maid to Kildeer in complete the story that sings Hold on a front of your client so you want to make sure they're prepared for that other kind of drawback to attempt to still waiting to temporary custody is that both parents have to agree so if you hit your client I'm bored let's limit this was supposed to put a fence around it you know and just keep it moving the other parent feel very strongly that they want to be heard they want their day in court this is stupid things I hear a lot and they're not wrong to feel that way if you're in a situation where it can harm your client even want it helped them kind of see the benefits of what your recommendation is what if the other parent and their attorney gunning for hearing there's nothing you can do about that finally at temporary custody I just want to talk will quickly about parties right as I said earlier his parents are entitled to an attorney if this is a constitutional deprivation that the state is petitioning to take temporary custody of their children and potentially remove them from their home grandparents are not entitled to an attorney but they can get one sometimes there's a legal guardian and they are also entitled to an attorney another right of the party is at any of the parties either parent the miners attorney which is a guardian ad litem for the state for the judge eternity test make sure that you get clear with your client that really if it's up to you to his father that it looked after that don't need a better also want to make sure poor if you're representing a mother that they know that anybody can ask for paternity test and that can also lead to some very awkward question by the judge if the person being the father in that turns out not to be the father there's going to be a conversation with the mother about who else could potentially be the father it is preferable for you to have that conversation with your client in private rather than to do it in open court another entitled to visit and they are entitled to bus passes for train passes to get to those visits and then later to their services to visit usually start out supervise your client needs to know that they won't feel offended what do you mean I can't be alone with my kids to who's part of the you want to ask initially for supervision by DCFS or it's a sign that means anyone that he say about us time to be a supervisor if it happens at placement isn't what your client wants somebody who might want to talk to patients with 10 then be added into the mix as a visitation supervisor for a transportation facilitator there are so many different ways people can kind of country gather around a fan help them get through this there are so many different rules so don't limit yourself or your client to it has to be like a foster parent or else with them mothers of newborns should request a much more frequent feeding daily is taking schedule there is a



solid science and arguments around the Bryan times it's not just for mothers but particularly if they're nursing and last of the parties races that it's just that the Department of Child and Family Services must pay for services they recommend a family I hear from parents insurance and I can't this and that it's not it's the state is taking temporary custody of the child and then recommending they pay for them.

Court Family Conference

The next step of a child protection case I'd like to discuss is the Court Family Conference typically this occurs in conjunction with a case management conference but not always the question at hand at a court family conference is what services have been recommended to the parent in order to reunify them with their children the governing law around the services can be found in your materials there is Kiss of the law that has to do with whether or not the services are necessary and appropriate that I will focus on a little bit later but the first Keys towards recommending their services is What's called the integrative assessment this is a type of social history that your clients will be interviewed by Seether an integrative assessor or the caseworker sometimes can play the role of I want to speak for a minute about the differences between the Department of Child Protection investigator who was responsible for the information received at temporary custody and the caseworker who is going to be potentially somebody from DCFS but another department or another agency on the caseworker is sometimes called the family worker and that's a different person so your client might talk about Communications with one or the other make sure they're clear on the different folks in the different roles right off the bat you want to reach out to the caseworker and make sure they're somewhat clear about any specific aspect of the case perhaps your client your case to the situation the parents have the right to have a service plan which is a list of recommended service or what you like do I use it as a carrot or stick either way your client should have clearly laid out the services charge you don't want to step on that case in any way they can be used value added Services first of substance alcohol abuse assessment on the back kind of like a mini integrated assessment where they talk specifically about your client's history of using or abusing drugs and alcohol set a reminder all he surveys even if the client doesn't participate and get integrative assessment earlier that can sometimes your thoughts with family as a way to not have it this content Rewards they're scared to be optional their kind of not optional and neither the integrated assessment so you really want to encourage your client for this kid in it unless it could be potentially detrimental to a criminal that being said they need to know that was



in there is not private and some of it is portrayed personal information like the family history in it is all coming out there was a judge who used to say typically when you're getting to know somebody or in a situation here it's more like an onion where you peel the layers in child protection Court choose to stay. That's why I try to open it yourself out there and it's uncomfortable so be sure that you acknowledge that it's not like you're asking them to take the driver's test course so the parents have the right have the service plan as I said within 45 days of placement and they also have a right to have a specifically tailored plan and this is where the case of the rules I mentioned about whether or not the services are necessary and appropriate content I did lay out these services are typically recommended that being said we definitely don't want to feel like your client is on an assembly line and it's like you might have a client who has been in therapy or a very long time and starting with somebody else that is specific to the agency might not be the best thing for them to make sure that it is specifically tailored to your client I had a client wants to during the course of the case had several huge family losses so this is this was a case you want to add in something that specific to her because grief counseling so think about that specific tailoring when you're going through the services directions desert and how they typically start supervised they also typically start out as a once-a-week and does minimum really want to push as much as possible with his eye for a patient for increasing visit every time you see or talk to you want to ask it was my client need to do to increase or stand visit its increasing obviously it's more fun maybe it's more than once a week maybe it's a longer duration than one hour on expanding visit is Banning from supervised to unsupervised now sometimes you can do a little stuck in between that like on supervised overnight if there's a family placement that the possibility Superstar unsupervised within two to meet somewhere in a public place maybe even at the agency just to start out like an hour an hour or two while by themselves and then later on just took two however they want it on to provide keep moving forward with the assertive umbrella Audrey interpretation as a parent who does not speak English as their first language has the right to have a caseworker who speak their language service The Family cast. Outlines V tissue is called Burgos she can look that up and that's on your outline as well that's a very important thing you can't have a situation with the caseworker stores are hand up and says oh I I can't I can't I don't speak Spanish so I can communicate with the parent is against the law so don't let that happen miscellaneous pre-trial Child Protection issues include the indicated report so when it case comes into court as I said sometimes they will be a pre court level of involvement like in tax services being offered me the offer because there was an indicated report involving a DCFS administrative level can result in either a report with a client was indicated for the allegation or that it was being done so with an indicated report typically they'll be a sort of a



hold placed on the parents right to appeal that but you need to check with the Department first because usually it's 60 days from the receipt of the letter thing that they are indicated the procedure of appealing an indicated report is an administrative procedure it's usually just filling out a lot of forms mailing in and usually the hearings occur over the phone unless there's a final hearing which may occur in it I do get back Administrative Office make sure you're clocking the time on that clear about aware you are because for parents who are dealing with children in our profession such as daycare workers teachers School nurses and indicated report can be hugely problematic for their careers and it's it's just there if they want to be a potential foster parent and if you don't want them having kind of a mark on their record that potentially doesn't need to be there the last pre-trial miscellaneous issue in child protection Court I want to address the issue of reasonable efforts this has to do with the efforts of the ages under the umbrella of the Department of Children and Family Services to reunify the family usually the issue of reasonable efforts is it brought up until the permanency hearing which is the sort of V for final stage of a child protection case there are times in this initial part pre-trial part a case where you find an agency or worker or both really dragging their feet and typically a judge won't hear or even make finding towards reasonable efforts before the 4th day's or the dispositional hearing but if you are a very squeaky squeaky will be heard on this issue I have been if the agency isn't doing what they're supposed to do to renew the family who can make a motion for no reasonable efforts even just getting that in front of the judge usually can kind of light a fire under it work are the agency and kind of get things go but that is an area where you have some agencies as a parent representative

Today we've addressed some pretrial issues in a child protection case when representing. We touched on the temporary custody hearing I'm making a critical decision of whether or not to stipulate to temporary custody or to do a full hearing we call witnesses we touched on important conversations to have with your client important conversations to have with the investigator and the agency that's assigned to your client I hope that this session has been helpful to you

Resources

Resources Specific to this Course

In addition, please see the resources cited within the material.



Resources for the Legal Professional

ABA Center for Professional Responsibility - www.abanet.org/cpr

Chicago Bar Association - www.chicagobar.org

Commission on Professionalism - www.2civility.org

Judicial Inquiry Board - <http://www.illinois.gov/jib>

Illinois Board of Admissions to the Bar - www.ilbaradmissions.org

Illinois Department of Financial and Professional Regulation -
www.idfpr.com/default.asp

Illinois Lawyers' Assistance Program, Inc - www.illinoislap.org

Illinois State Bar Association - www.isba.org

Illinois Supreme Court - www.state.il.us/court

Lawyers Trust Fund of Illinois - www.ltf.org

MCLE Program - www.mcleboard.org

