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*Juvenile Law: Trial Issues  
When Representing  
Parents In A Child  
Protection Case*

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# *About the Presenter*

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## *Rachel Koch*

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**

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This course will cover issues arising in a Child Protection trial including: a discussion of the critical decision to stipulate versus having a full hearing (which covers client capacity issues), witness preparation, whether or not to call client as witness, outcries by minors and hearsay protection at trial.

### *Course Presentation*

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This course provides a fundamental overview of the process and procedure of trial issues when representing parents in a child protection case.

This course will provide a comprehensive overview of the laws and strategic considerations in representing parents in child custody case and examines whether the minor was abused, neglected or dependent, the governing law, what is a Prima Facie cases under 705 ILCS 405/2-18(2)(a)-(k), Definitions of Abuse & Neglect under 705 ILCS 405/2-3 and trial considerations of each of these.

This course provides practical guidance and a discussion on best practices regarding pretrial discovery issues, expert testimony and witness testimony, pretrial motions, motions to dismiss, the case management conference, hearings vs stipulations and parental rights.

This course provides a base of skills, knowledge and perspectives regarding privileged documents, drug, alcohol and mental health records, incarcerated clients and other witnesses.

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 child protection issues.

### *Course Material*

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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 representing parents at trial in a child protection case.

The ability to understand the duties, roles and responsibilities of counsel in situations involving trial issues while representing parents in a child protection case.

The ability to recognize and describe the laws and strategic considerations in representing parents in child custody case, examining whether the minor was abused, neglected or dependent, what is a Prima Facie cases under 705 ILCS 405/2-18(2)(a)-(k), Definitions of Abuse & Neglect under 705 ILCS 405/2-3 and trial considerations of each of these.

The ability to identify, distinguish and implement best practices regarding pretrial discovery issues, expert testimony and witness testimony, pretrial motions, motions to dismiss, the case management conference, hearings vs stipulations and parental rights.

The ability to understand, discuss and implement practice tips to improve an attorney's practice and provide improved representation to clients.

Participants will practical gain skills in the area of trial preparation, evaluating and understanding privileged documents, drug, alcohol and mental health records, incarcerated clients and other evidence.

Upon completion of the course, participants should be able to apply the course material; improve their ability to research, plan, synthesize a variety of sources from authentic materials, draw conclusions; and demonstrate an understanding of the theme and concepts of the course by applying them in their professional lives.

## Timed Agenda:

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**Presenter Name: Rachel Koch**

**CLE Course Title: Juvenile Law: Trial Issues When Representing Parents In A Child Protection Case**

<b>Time Format (00:00:00 - Hours:Minutes:Seconds)</b>	<b>Description</b>
00:00:00	ApexCLE Company Credit Introduction
00:00:20	CLE Presentation Title Juvenile Law: Trial Issues While Representing Parents In A Child Protection Case
00:00:32	CLE Presenter Introduction
00:00:45	CLE Substantive Material Presentation Introduction
00:24:59	Expert Testimony
00:34:51	Case Management Conference
00:46:54	Hearings vs. Stipulations
01:04:02	Presenter Closing
01:05:22	ApexCLE Company Closing Credits
01:05:26	End of Video



## Course Material

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

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#### Governing law – what are you working with?

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- Prima Facie cases: 705 ILCS 405/2-18(2)(a)-(k)
- Definitions of Abuse & Neglect; 705 ILCS 405/2-3
- Most Frequent: NEI, ASRI
- Less Frequent
- Definitions of Dependency: 705 ILCS 405/2-4
- Preparing to argue Dependency C
- Other evidence: 705 ILCS 405/2-18(3)-(5)
- Findings & Adjudication: 705 ILCS 405/2-21
- Orders of protection in lieu of trial: 705 ILCS 405/2-20

### Pretrial Discovery

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#### Generally

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The Code of Civil Procedure, 735 ILCS 5/1-101, et seq., is applicable to those cases brought under the Juvenile Court Act. 705 ILCS 405/2-18(1).

Civil Discovery Rules not automatically applied but left to court discretion (S.Ct. Rules 201, et seq.)

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- Limited interrogatories
- Creative methods
- Get written notarized permission from client. 89 Ill.Admin. Code §431.50(b).
- Ask GAL to get some records. 89 Ill.Admin. Code



- §431.50(a).

## Privileged Documents

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- Only attorney client privilege applies 705 ILCS 405/2-18(4)(e).
- Everything else is fair game under 705 ILCS 405/2-18 (mental health, treatment, hospitalization, social security, drug, and alcohol records)
- Comes in under business records exception
- BUT look at why records requested – regular course of business or in anticipation of litigation? In re A.P., 2012 IL App (3d) 110191, 965 N.E.2d 441, 358 Ill.Dec. 370.
- Drug and alcohol records
- 42 U.S.C. §290dd-2 and 42 C.F.R. pt. 2 should be reviewed. Note that 20 ILCS 301/30-5 incorporates 42 C.F.R. pt. 2.
- Mental Health Records
- Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/1, et seq., provides pertinent information.
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub.L. No. 104-191, 110 Stat. 1936, and 42 U.S.C. §1320d-2 govern mental health and medical records.
- Need a court order + client release
- Include date of hearing and scope of records sought

## Considerations

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### Incarcerated clients

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- Consult criminal defense attorney
- Interrogatories
- Requests to Admit
- Strict deadline - Illinois Supreme Court Rule 216.

### Experts

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- medical cases
- psychological experts



## Other Witnesses

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- particular to event underlying allegation
- service providers
- others relevant to allegation

## Case Management Conference

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Review S.Ct. Rules 218 and 904 as well as any local circuit court rules

## Scheduling

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- 90 day waiver 705 ILCS 405/2-14(d).
- Explaining to client
- Need for
- Experts
- law enforcement
- complex discovery
- Considerations of Hearing v Stipulation below

## Pretrial Motions

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Motion to Vacate Temporary Custody - 705 ILCS 405/2-10(9)

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Any party may petition

Moving party has burden of proof to show

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- no more urgent and immediate necessity
- Circumstances changes
- Someone not the alleged perpetrator will care for minor, OR
- Services have eliminated the need for custody,



- MUST show vacating TC order and returning to parents is in the minor's best interest
- MUST include credible evidence

### Motion to Dismiss - 735 ILCS 5/2-615 and 5/2-619

- unlikely to succeed
- Constitutional Challenges: follow S. Ct. Rule 19

### Motion for Summary Judgment - 735 ILCS 5/2-1005

- Can address one or all allegations
- with or without affidavits
- can use requests to admit to underlie motion

### Early Termination of Parental Rights - 705 ILCS 405/2-13.1

- State or GAL can file at any time after petition filed
- Reasonable efforts to unify no longer required if successful

### Hearing v Stipulation -

#### In general

Similar to TC but with hearsay protections

Ask for a proposed stipulation either way

- Window into case plan
- Can edit for superfluous, prejudicial information

#### Hearing

#### 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*

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- Judge hears everything and can't unhear it
- Information heard at trial may affect judge's posture at disposition
- Burden of Proof
- Higher than TC but still not high
- Preponderance standard

### *Stipulation*

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#### *Best if*

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- Drug exposed baby or other irrefutable evidence presented
- You want to limit what is said about your client

### *Drawbacks*

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- Frustrating for clients
- Both parents (or a guardian) must agree in order to avoid a hearing

### *Parents' rights*

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- Hearsay protections
- Right to a hearing
- continuing visits and services

## **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: Trial Issues While Representing Parents In A Child Protection Case Transcript**

Hello my name is Rachel cook I am an assistant public defender in the Cook County Child Protection conflicts Division. I've been at the public defender's office for 8 years and before that I was in private practice I'm going to be talking today about Trial issues when representing parents in a child protection please we're going to go over some pretrial Discovery issues how to break it down some pretrial Discovery issues in case management conference and finally the adjudicatory hearing itself the trial and he cheated fission of whether or not to stipulate or to have a full hearing will you call witnesses.

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

A main question at trial in a child protection case will be was the child for children abused neglected or dependent. First look over the statute itself you should have in your materials the statutes so you can look at the language itself the first overarching point I want to make is that you want to keep in mind that this is not Criminal Court you have a different standard of proof, Canada poop is a preponderance of the evidence on it is not Beyond A Reasonable Doubt so when the judge is answering a question or like a child or children abused neglected or dependent keep in mind that if you have an even amount of evidence to say no and the state hasn't even amount to say yes can you put a feather on the safe side can I Prevail this is a issue you need to communicate with your client about today or clear that it is a much lower burden of proof than criminal case which is the typical burden of proof that mostly people are familiar with the other thing to keep in mind over all as far as the child protection statutes in Illinois is usually the case law outline factors to consider in making XYZ determination rather than as in the case with criminal law elements



of a crime so in this way it's more like a family live some of you practice in that area so looking at the governing what are we working with here I would ask you to kind of review the statues the languages is a little not friendly to read but review that and you will see that it's somewhat vague right and that's where these kind of doctors clinic in the case law that should be accompanying it when you have your petition in front of you that you're working with you should have of course already were the most frequent that you find our neglect due to an injury of environment or any eye and a tooth for a substantial risk of physical injury for a SSRI those who usually go hand-in-hand are usually present in any case with any other allergy less frequently you will see other types of specific types of abuse physical abuse sexual abuse excessive corporal punishment one of the last week with one that you see I'd like to discuss a little bit is dependency cases for dependency statute is outlined at 705 ilcs 405 2-4 to got dependency a b and c is when not a parent is present to parent my child this can be because both parents are deceased both parents are incarcerated one is incarcerated 150 any combination of them one might argue more than that that's pretty clear fact you know that or you don't if there is not available I don't think she is about to child is dependent on this date because one or both parents have a physical or mental disability and are unable to 8 mental or physical condition to argue that you're going to want to assure us enough records documenting what the condition is a client with the other parent the last dependency section that is unavailable typically in the hands of parents to argue over the state offering is dependency see otherwise known as no-fault dependency now sometimes this day it will have that as its Central allegation and it will be kind of clearly recognize that the child is dependent on the state because of conditions of the child herself and not because of Any fault of the parents so in other words for child has moved beyond what they say that parents can provide and are there for dependents reliant on the state this will typically show itself is beyond the naughty teenager if a child has mental or emotional condition that require assistance beyond what the parents are either financially capable of for something beyond that but if it's known as snowfall dependency and most of the time and the conways have to argue for that what you're going to want to get together his evidence to show number one seed that his condition is beyond that the parents can handle and over to you have to show the efforts of parents made so what kind of services do they try to get their child into light therapy and also what actions did the child take that potentially put him or herself in danger as well as other family members there are pieces of the statues at outline potential Avenues to avoid adjudication one is 705 ilcs 405 / 2 - 2 all this should be an order of protection that is put for the order protection is not your typical order protection one person versus another person or one person to stay away this is just a kind of protecting the child and



returning the child to the parents with the factors that must be made in order to teach a child with the parents this is kind of instead of this is something typically offered by the state's attorney there will be as an accompaniment accompaniment figuration or a list of that's basically that brought the case into the system and what that is is sort of a untapped potential just in case a trigger on in case the parents don't mean two conditions that are listed under that order protection so what does that look like typical Border Protection might say that say there's a case that the parents who didn't take a child to certain ways to the doctor or hospital so one of the conditions might be a parent to a parent education class at the hospital and they call doctors appointment to pay as well. Typical don't be under the influence of drugs and alcohol alarm If the parents fail to meet those conditions then there's a sort of automatic trigger that there will be funded so it's a way for the state kind of secure their position but still have a potential communication situation that works for the parents the next section I'd like to discuss his pre-trial discovery the overalls have catching cases are governed by the code of civil procedure kissing and materials is 735 ilcs 5 / 1 - 101 but the Civil Discovery rules are not automatically applicable are these are the Supreme Court rules 201 and follow it one of the ways in which child protection cases differ from some civil litigation is that they're limited interrogatories that are available as of Discovery tool sometimes also might need to use some creative a method in order to get the materials that you want and it's between a state and a guardian ad litem they will be gathering to Supino's says applicable documents but if there's some supplemental materials you're going to want to make sure that you have those identified and either do subpoenas for them can also request witnessed and notarized permission from your client for some records the privileged documents that are not allowed our various to very limited segments and it's only attorney-client privilege that supplying took it out documents otherwise everything gets in including things you wouldn't think would come into evidence so this includes mental health record or alcohol treatment records hospitalization Social Security and obviously criminal records mental health records hospital records even what I'm going to refer to as in tax records come in and intact records with the Department of Child and Family Services involvement with parents that preceded I'm here Court involvement so if the curtain might come in at a lower kind of level before and that will be our first offered into evidence these records generally come in under the business exception to hearsay. One of the protection that parents have attitude acadian is here say you did not have payments coming in at once from one of the parties for directly told to the witness by a lot comes in under the basement exception rule however you have to look very carefully at these records that are being offered under the business role as the business of pasta a pea in the citation and materials Skies that you can't put into evidence materials



that were prepared in anticipation of litigation I'm rather than just your standard hospital records to this case outline of that and how to distinguish another exception to the exception and it doesn't record is the case in re JC and that's this citation is 2012 Illinois Appellate Court 11086 is a little less straightforward but there is some room for parents attorneys in trying to prevent like a massive amount of documents from coming in that are problematic for your client in JC the Appellate Court did find that the trial court erred by letting in basically what was all of the impact material that was included in what I'm going to call the ACT packet to Department of Child Protection on the investigators packet of information that informed their investigation so the court found that the trial court erred by letting you know all of it I mostly because the investigator couldn't testify to it being in standard practice of their business XYZ wasn't in hundred percent familiar with the materials that you weren't obviously prepared by that worker recorded find that that error that the trial court committed was harmless so you got to hold a little something and then I used it between the two of those cases there's some room to keep some things out next week where that most drug and alcohol records as well as mental health records will come in and the statutes and administrative allowing those in arrested in the material.

## Pretrial Discovery

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There are a few considerations for pretrial Discovery first if you have a client who is incarcerated want to make sure that you consult your criminal defense attorney immediately you have to be very careful retrieve pretrial Discovery pitfalls such as requests to admit he can be a real trap for your client whether or not they're incarcerated but certainly they are incarcerated you want to make sure that you were we're clear about the deadline and how you respond in limiting the response you don't want to do anything that could potentially harm your clients criminal case if they are incarcerated they requested MIT have a very strict deadlines and this is outlined in Illinois Supreme Court rule 216 so if you your question is basically been to fax it is as the state is going to see it and then you answered yes or no and if you don't answer it's all taken as a gas this is common practice in in other areas of civil civil litigation that if has a busy attorney you let something kind of get buried under your stock on a Candida diet so be careful about deadlines another consideration that I want to spend a little time to start thing is whether or not to have it expert now one of the growing areas in medicine is a specialization called child abuse Pediatrics there are folks kind of working for and likely finding child abuse I gaining where a child comes into the medical care and going to hospital emergency room evaluating



what the parents version of what happened was and comparing that to their injuries typically when they do something to be non-accidental it has to do with their assessment that the parents explanation of the child's injuries doesn't match up with injury involves for Andrea's house now many times in this kind of scenario the injury occurred when parents weren't there for the parent turn to turn his or her back child hold off a bag somehow injured themselves typically the parents are questioned by the staff at a hospital about how they think this could have happened into this is very speculative they may offer a possible explanation that then the hospital staff says is inconsistent with child's injuries when in fact your client was just trying to think of how could this have happened right keeping mind parents and on parents a life when there's a physical injury or an accident like a very scary time for anyone but particularly when there's a child and particularly when there's a child because they're too young when you can't have that child say what happened we have to get gas and sometimes those gases can wind up getting serious trouble this issue is compounded when parents do not speak English now they do have translator translator is available through like a phone service at the hospital to get lost in translation so really want to take him to if you have a medical case and there were hospital records Beyond and underneath what you're getting in your packet which is just like one person's assessment who may or may not have even examine the traffic issue of whether or not the parents story when you met up with her child injury from the conclusion that is quite quickly and usually when there's two or one explanation that's looked at side-by-side with the injury attorney not looking at the whole picture and the whole picture is what you as a representative want to provide to the judge so medical expert well are a couple things to keep in mind if you're making this decision her father expensive so your office for you who to be prepared to Shell out easily three to \$500 an hour and that's as probably low-balling it. Unfortunately want to step up on behalf of parent there just aren't and it is unfortunate but that's a real consideration the folks at hoodoo serve as an ending they are not volunteering but the folks who will testify as a medical expert on behalf of parents accused of abuse or neglect are few and far between show in a lot of jurisdiction the gate Guardian Ad Litem the judge of probably sick of seeing people and sometimes they get very defensive so if you're going to go with a medical expert make sure that you do a lot of preparation and some of that preparation includes making sure they're clear that this date and guardian are going to come so when you are looking at potential medical expert might also consider a little slower this point you could be somebody like a retired emergency room nurse I've had my records reviewed by the person they will tell you if it's worth it if you have any sort of wiggle room in between what just like how to use a pediatrician for nurse non-accidental trauma and if there's some other explanation cuz I can talk



a little bit about Mario where we will be retaining an expert and the kids will also be would get an expert chances are they're expert particularly if it's a medical case will be now one of the things to take into consideration as I mentioned earlier with the Smoothie growing field of child abuse Pediatrics the treating physician may not in fact have even seen the minor at issue so obviously you want a really poor through the records to see exactly where it's at expert bad I can Pierce on that minor and if they did not at all who are they relying on to communicate so what day is there was a broken bone situation on we want to look at the Radiology report and there may be other test if you will want to request that a minor has because we're one condition may be pointed to as the subject of a be there maybe pre-existing conditions that led to that solution for example situation you may have a child who has childhood wickets that sounds crazy and something like Pirates yet or people had in the olden times like there is a Resurgence of this are less exposed to sunlight and scariest things that I'm trying to see about the system or not a doctor this is not medical advice but has been a rise in income per second when that is the case that bones are more likely to be fragile and broken more easily have a case where there is a subdural hematoma cause blood clotting issue want to look at did he do abuse or neglect before they reach that conclusion the wild Discovery World and how you remember that in behavior that you are up front in the party to the case about what you want to play for any other medical expert either in the packet of information you got at the temporary custody hearing or in a subsequent chunk of discovery fun. I had several situations where I'm keeper and look like a British person short. Of time they may not have been a house what we would say is like book learned he had supposed to experience learning you can have a visually in degrees and you still not be super functional in your profession if they don't have a lot of hands-on experience not without supervisory oversight that's something you can poke holes in as far as their status as an expert and have your expert kind of look at that another area that you might Seattle Team make them in the state of birth is what is their area of specialization and certification right so I'm hit again if you have a broken bones. Are you dealing with somebody who specializes in broken bones and children or you doing with a general practitioner or somebody pees in child abuse Pediatrics on these are kind of different different areas of expertise and your expert can help you put some questions on the table as to their qualifications as an expert produce fat when you are preparing your witness keep in mind to General evidence rules where you got your going to have on both sides of Carnival coupons on hearing the first where you qualify them as an expert in and go over the TV and experience and all that he'll have your question prepared for class for their effort and be prepared for the other side other parties stay in Guardian Ad Litem questions on Cross for your expert as to their



expertise and the other piece is is the The Miner and minor injuries itself in any kind of a company report so the make sure they can prepare those separating Superior witness for those separately course nobody want to repeat about regarding their qualifications in their chosen profession she want to make sure that they are there are comfortable with folks questioning their expertise and finally as far as preparing your expert witness you want to make sure that they have a kind of central focal point of why what about the case and was not abuse or neglect or maybe could have been the one of a kind of biggest cases I had involving expert was really pounding in on the question not could have happened children's child but is there any possibility that it did it so in this case it was a broken bone that the state was alleging was caused by an abusive or neglectful action I was trying to say the tile fell off the bed and this is how it happened so my expert was really trying to hammer in on the potentiality for this break even if it's not likely the other parties were saying this is so rare that it happens this way almost always almost always this and that but we want to look at is this even within the realm of possibility it could have been an accident and in that area by sight constantly coming back to that question he did wind up prevailing in that case I want to be sure to thorough preparation of an expert witness and you want to make sure to have a central focal point.

## **Case Management Conference**

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Next I would like to discuss the case management conference this is a hearing date that will include a natural order which will be your list of witnesses and documents that will be offered into evidence I'm here is where you want to call all the records that you hopefully they have been securing the entire time as well as any potential expert witnesses that you impertinent Witnesses let's look at who do you want to have on testifying well again let's go back to the primary overlying question was a child at issue or children abused neglected or dependent and if a person can help you get to a no thing might consider having them for weather you're going to want to think about books you are intuition about the case and whether it was actual Witnesses were present at an event spoke to her talk to about something anyone who might be able to show that there was not abuse or neglect to these children so the most obvious example is if what they say there's an allegation of abuse and neglect your client left a child alone if there was in fact a babysitter or neighbor a grandparent or somebody who is always watching a child or children obviously want to have them pacifiers other folks to have testify include service providers see if you have a case that was a failed intact case and you have someone who is going to have to buy that your client made progress in their services by all means that person but of



course you want to talk to these people before hands going to put anyone on the way to stand you don't know what they're going to say anyone else relevant to the allegation you might have eyes I have in the past a very involved teacher for school counselor for some of their school person a neighbor or a friend who regularly see the child or interacts with a child and can refuse in any way the allegation in a petition with any witness even professionals you're going to want to make sure they're clear about how it's going to go by so if you're going to do a direct we going to practice with them and want to spend practicing asked questions on Cross so that they don't get that dispenses for give off some kind of negativity that's going to bother the judge so you will have those books listed in that case management order typically the case management order is able to be amended up to two weeks before you so don't worry if you assigned your case management conference order or CNC as I'm going to call it and then you can come up with some great expert you can usually typically the case management conference order is governed by a local circuit court rules as well as Supreme Court rule 218 and 904 with the trial scheduling your client has a right to have an adjudicatory hearing within 90 days of temporary puppy in cases such as medical cases in other cases where there's a lot of record calling involved you might be asked to wear that is something that you probably want to discuss with your client if they see or hear that you're doing something on the record o l k weighs 90 weight 90 which is difficult thing for you and I be like hold up what were they talking about so review that with your client about why it might be to their advantage to waive that right to have a hearing within 90 days you can also discuss with your client what I talked about earlier which is experts various Witnesses who is going to be the best for putting 14 L to the question for the child abuse or neglect it I am going to talk about whether or not you're going to do a full hearing with Witnesses or situation in the next. Song section but the one after this but that is something to be thinking about when you're at the case management conference do you want to think about if it's possible and under every circumstance or a draft of a situation why not you're going to get a sense of what does a tick look like anyway

## Pretrial Motions

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I would like to talk about pretrial motion now pretrial motions aren't typical in a cow protection case they do exist and they are available keep in mind the judicial economy and whether or not you want to do an extensive motion and caring for something that is not going to make or break your case and potentially irritate the judge just goes back to a piece and it's in its previous class about a pre-trial issues do you really want to get to know support room so



if you haven't already spent a little time that isn't just your hearing time chatting with the state's attorney the guardian the court coordinator and the clerk those are all folks who know what makes the judge mad what pleases the judge you need to know these things and take him into consideration during the trial so think about that before you emotion you were able to make a motion to vacate temporary custody at any point now this is governed by 705 ilcs 405 / 2 - 10 number night in order to do this travail we need to show that the Urgent and immediate necessity that was present a temporary custody is not present there's no real need for the top of your mood anymore why because circumstances has kids can you have to show how they changed the moving party has the burden to show how circumstances change that urgent and immediate need is not present anymore you can also show that someone who's not the alleged perpetrator will be caring for the child or that the parents did services so that there's no need for temporary custody anymore so it will also have to look at the best interest factors which kind of over lie all tabs catching cases and showed up while I show support wise attorney to the parents is in the child's best interest in vacating temporary custody and you also have to have credible evidence so likely your client clients are parents are going to say this house happiest with me I did everything I was supposed to do we don't need to have it for involved and that's valid but you have to look at is that a determination to judge is going to make and agree with you really have to show that there's been some change and some movement from to alleviate and need the Urgent and immediate need for the top of the return of the child to be removed another pre-trial motion you can make just like with any civil litigation is a motion to dismiss governed by the same statutes governing motion sickness unlikely to succeed they're all so you can do a motion to dismiss under constitutional challenge and in doing so would follow Supreme Court rule 19 if you got good back make use motion definitely but don't make a frivolous motion of course if you don't think that you have some facts on your side you can also make a motion for summary judgment I have seen you Prevail until protection Port you can address one or all of the allegation you can do it with her without affidavit and you can use request to admit to underlie your motion another pre-trial motion not one you're going to want to make is early termination of parental rights this is governed by 705 ilcs 405 / 2 - 13.1 early termination of parental rights basically it's something that the state or the guardian ad litem can file at any point after the petition is filed and the Bentley what it says is that he is at the agency that's just get servicing the family doesn't need to make any effort to unify because the allegations are so egregious and extreme to typically you see this and allegations of torture which is very unusual to see or if there's a child who is deceased because it's allegedly of actions by the parents this is very extreme situation and they're just saying that the



standard of making reasonable efforts to reunify like another child protection cases so be aware that this could.

## Hearings vs. Stipulations

Let's take a look at the adjudicatory hearing itself and your critical decision to make with your client of whether to have a full hearing so you call for to do a stipulation or agreement regarding some of the key elements to the case by elements I mean exactly then at 4 to be late to the entry of certain eye documentary evidence so in general this is a similar decision that you made that temporary custody so you had the choice to do a full hearing or stipulate for the purposes of 10 you are going to pick similar things into consideration but at adjudicatory hearing you will have the option to ask at the very least for a recent draft and as I said earlier this will give you a little window into this day and guardian ad litem case plan or kind of what are going to focus on what could the queen look like if I testify he or she would stay and then you'll have like a numbered thing they were signed to have this conversation with Mother who said they received this conversation with Dad he said ABC just don't give you some Focus for yourself as well as a peek into what their kids planet be aware that is supposed to be Wishin is merely a draft of a final situation that will be read into the record and entered into court figures a draft in that you can edit it for example you can edit out unnecessary things or you could even add certain things and dad is that it called to testify your client will say none of this happened this is all right. Well I mean you can try but you want to look at you have a beneficial pieces that pertain to this event service provider for example he may have said your client was making progress in this service you can go back and forth with their friend draft and a good way to go over it with your client is as in the case with temporary custody review the situation which is typically in an outline form and you will be able to determine which are the Fairfax and go to be like the birthday the location of a child who is his mom who's the dad indoors Things Are I'm gaining have potential testimony if called to testify termites trailer carrier I had to be at work so yeah sure that won't help me up at 4 but for you and I live in Addison this building they can't they can't transfer vehicle tomorrow afternoon what's good news and I should be out there. Then gets home and have them call me and then you call me and I talked about that and everything I don't care anymore Let it go too far as that maybe you know I turned my head and he will come and go back to know that they are sophisticated company then they got bigger problems but the higher up in the parking lot like you got one Canada right now I don't know what to do. My



business girl higher up the me to work so well with her all right you know they know who you are then I don't understand

Reputation on to the allegations and Institution drawbacks to hearing some of them are similar to to stimulation it's hard for parents to sit through this and care about what they were it is some parents are unable to sit through his ring is helping me because it's very painful you want to make sure that they're prepping know that this is basically I give me an airing of the Grievances of their parents are now are there drawbacks and want to think about is that I mentioned earlier some judges get real stuck on little details that might be particularly if you what happened to bring the case and and then just kind of keep hammering that pumping way after tonight about again this is as good a reason to spend some time in this courtroom you going to be in and get to know the judges like them just like things that will be sticky and creative potential future problems for your clients reunification with her child which again is the overarching goal of child protection court itself it's the stated goal is the first piece of the statues and so for really any hearing you want to keep in mind this is the kind of umbrella over. Again soldering standard are typically our findings that are made from just as in a criminal case certain Witnesses are doing to be credible and not try to call and it's more likely that a alarm for 7 officer is going to be the incredible Than T

Officer is going to be the incredible escavator their testimony even if there's things that you can tell the cows come home chances are their testimony more beneficial to your client lunch and bring your questions and make sure you can do some practice work with them and having a full hearing what you call witnesses for being a stipulation is one you want to make sure you're with your car make sure your client understands exactly what the word from Vicky wave in me because it will likely by the judge over if you understand what the ramifications are the stipulation that I could then into finding that would affect me confirm ovulation do know that you will still have to keep in mind that you argue for no findings after you've maybe have them back and forth with this is attorney in the guardian ad litem about what's in this situation if you then turn around and say that might create some problems when he when their trust what you're going to do or be asking for might want to have a conversation with the state's attorney about that when you're going back and forth and the directory Dallas Meadows pool time all of this kind of situation going on whether you're calling your witness list or you're exiting participating in Services you about where things are because chances are if you're doing, prep and then the caseworker forgot about it or they didn't step up and and make that call that service provider they were supposed to then they fell off the list that you're already behind and they have to be to catch up that a regular check-in time with



your client about how things are going with the others about parents rights trial time you talk about making this critical decision whether or not a pre-trial motion and we also talked about pre-trial Discovery could help you.



## Resources

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### Resources Specific to this Course

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

### Resources for the Legal Professional

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ABA Center for Professional Responsibility - [www.abanet.org/cpr](http://www.abanet.org/cpr)

Chicago Bar Association - [www.chicagobar.org](http://www.chicagobar.org)

Commission on Professionalism - [www.2civility.org](http://www.2civility.org)

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

Illinois Board of Admissions to the Bar - [www.ilbaradmissions.org](http://www.ilbaradmissions.org)

Illinois Department of Financial and Professional Regulation - [www.idfpr.com/default.asp](http://www.idfpr.com/default.asp)

Illinois Lawyers' Assistance Program, Inc - [www.illinoislap.org](http://www.illinoislap.org)

Illinois State Bar Association - [www.isba.org](http://www.isba.org)

Illinois Supreme Court - [www.state.il.us/court](http://www.state.il.us/court)

Lawyers Trust Fund of Illinois - [www.ltf.org](http://www.ltf.org)

MCLE Program - [www.mcleboard.org](http://www.mcleboard.org)

