



Family Law and Practice Section MCLE Program Webinar June 16, 2020

12:00 PM – 1:00 PM

Welcome/Announcements and Introduction

Henry D. Kass – Family Law and Practice Section Chair

Program – DCFS Investigations and Appeals

Speakers

Melissa (Missy) Kuffel - Mulyk Laho Law, LLC

Speaker's Bio – see attached

Presentation Summary

This training will focus on understanding the DCFS abuse and neglect investigation process as well as the appeal process thereafter. You will learn how to guide your clients through this difficult and confusing process and make sure clients don't make common mistakes which can have negative consequences on the outcome of their case. Missy will also focus on the do's and don'ts during a DCFS appeal and how to prepare for and execute a successful appeal hearing.

Link to Evaluation

The evaluation must be completed in order to receive CLE credit.

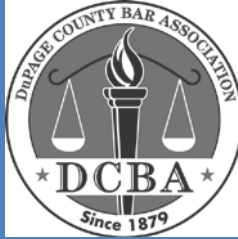
<https://www.surveymonkey.com/r/FamilyLaw06162020>

Next Meeting:

September 2020

Video Tutorial for Action Orders and Blank Orders for the 18th Judicial Circuit Court

<https://www.loom.com/share/6bd5531f7ae1432498dcf221a92906b3>



Membership Renewals Have Begun

Sign into your membership profile at DCBA and click on the ***Renew Your Membership Now*** banner to renew your membership. Anybody who renews by July 3rd will be placed into a drawing to win one of three \$100 Amazon gift cards.

COVID Relief Fund

The DCBA and the DuPage Bar Foundation have established an assistance fund for lawyers facing personal hardship due to the downturn in work caused by the COVID-19 pandemic. Please help us promote the availability of this fund, and, if you are in need, please submit a confidential application at www.dcba.org/reliefapply. Donations to the fund are also welcome at www.dcba.org/reliefdonate."

Earn CLE Online!

DCBA OnDemand CLE is Now Powered by IICLE The Illinois Institute for Continuing Legal Education (IICLE®) and the DuPage County Bar Association (DCBA) are excited to offer a new IICLE®Share collaboration to provide DCBA members a high quality and reliable online learning experience. Members can find the link to The Illinois Institute for Continuing Legal Education (IICLE) on the DCBA website under "Legal Community" → OnDemand CLE → Online CLE Catalog. You must be logged into your DCBA Membership Profile in order to view courses for free or at a reduced price.

View & Print CLE Certificates through the DCBA Website:

Manage Profile -> Professional Development (under content & features) and choose the icon to the left of each meeting to print your certificate directly or choose to have them emailed to you to save to your computer (you MUST be logged in to view this feature)



Melissa J. Kuffel

Melissa is a graduate of University of Madison-Wisconsin with a degree in Journalism. She received her Juris Doctorate from The John Marshall Law School in 2008. She has concentrated her legal practice in family law matters, including divorce, post-decree matters, parenting and support issues, paternity, DCFS, guardianship and adoptions. Melissa represents clients in DuPage, Cook, Kane, Kendall, Will, Lake, and LaSalle Counties.

Melissa has a strong and extensive background litigating highly contested custody battles and DCFS matters as she spent 7 years as an Assistant Public Guardian in Cook County representing abused and neglected minors. Melissa is currently a certified Guardian ad Litem and Child Representative in Domestic Relations cases and is currently the Chair of the Children's Advocacy Section of the DuPage County Bar Association.

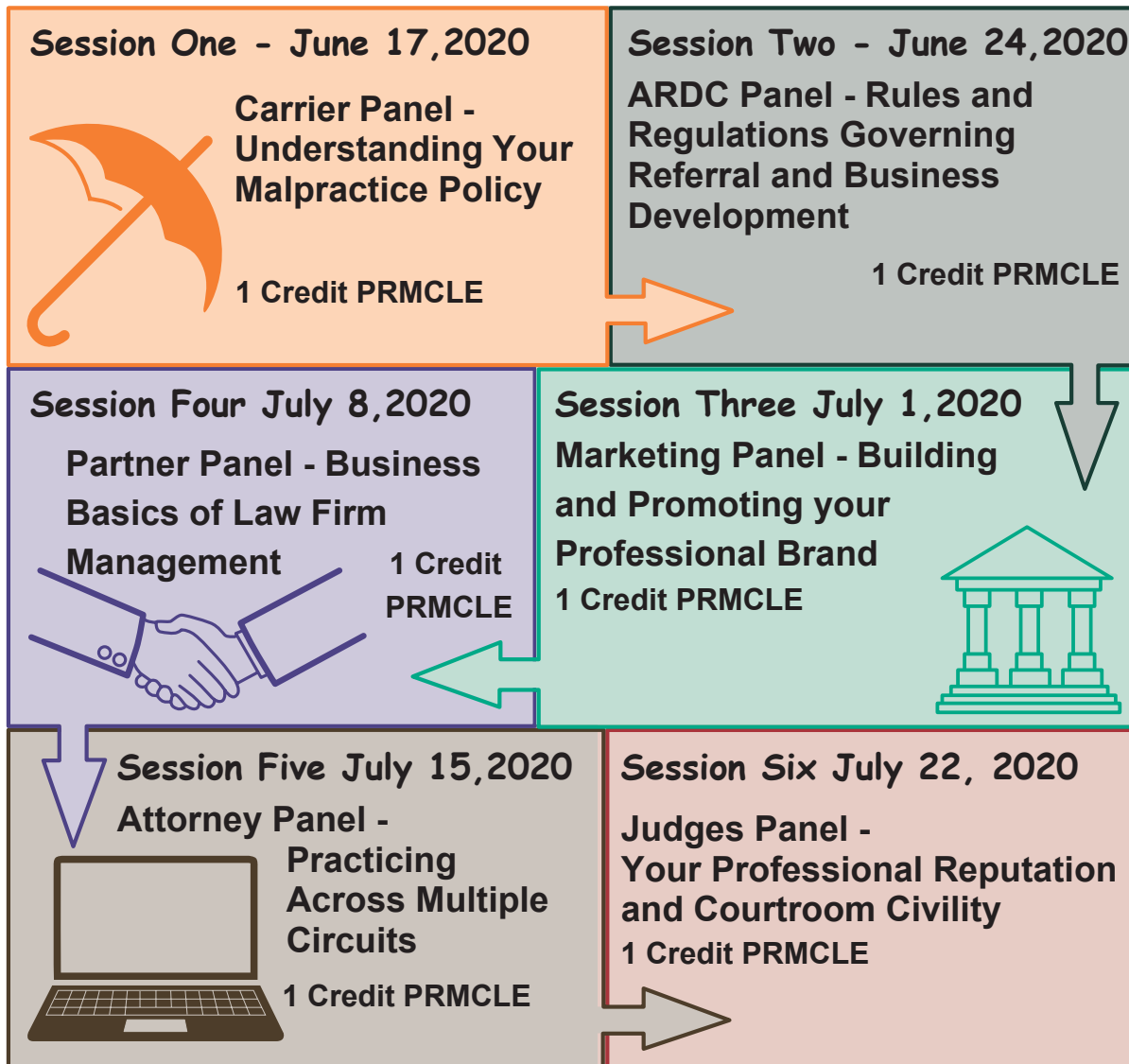
Prior to joining Mulyk Laho Law, LLC, Melissa was an associate at Sullivan Taylor Gumina & Palmer from June 2015 until October 2018, where she handled all family law matters. Prior to moving to private practice, Melissa dedicated herself to public service at the Cook County Public Guardian's Office.

Melissa is a member of the DuPage County Bar Association and the Illinois State Bar Association.

PRACTICE MANAGEMENT Basic Skills

Noon - 1:00 PM on Wednesdays,
June 17 - July 22, 2020

NEW FORMAT: Delivered Virtually Via Zoom Webinar



Join the DCBA for the 2020 Practice Management Basic Skills Seminar Series. This Professional Responsibility Series will focus on practice management and is open to **ALL ATTORNEYS** to provide insight from judges, experienced attorneys, business consultants and the ARDC regarding issues faced in day to day practice. In addition to PRMCLE credit, this seminar will satisfy the Illinois Supreme Court Newly Admitted Attorney requirement (Rule 793) for newly admitted attorneys. You can register for one session, multiple sessions, or the entire series.

The full program is pending approval by the Illinois MCLE Board for 6 hours of Professional Responsibility (PRMCLE) credit by the Illinois Supreme Court Commission on Professionalism.

Register now on the DCBA Website www.dcba.org/BasicSkills2020.

The background of the slide is a dark, textured surface, possibly wood, with numerous water droplets of various sizes scattered across it. The droplets are clear and reflective, adding a visual texture to the dark background.

DCFS INVESTIGATIONS AND APPEALS

DCFS INVESTIGATION BEGINS

- **HOTLINE IS CALLED: NOW WHAT? QUESTIONS TO ASK YOUR CLIENT**
 1. WHEN DID THE INVESTIGATION BEGIN, BECAUSE DCFS HAS 60 DAYS TO COMPLETE THE INVESTIGATION. DID THE INVESTIGATOR CONTACT YOUR CLIENT OR DID THEY LEAVE A PAMPHLET/CARD AT THEIR HOME?
 2. HAVE THEY SPOKEN WITH THE INVESTIGATOR YET? IF SO WHAT TOOK PLACE DURING THE CONVERSATION.
 3. WHAT ARE THE ALLEGATIONS? HAVE THEY RECEIVED A CANTS 8 YET WHICH EXPLAINS THE EXACT ALLEGATIONS FOR WHICH THEY ARE BEING INVESTIGATED?
 4. HAS A SAFETY PLAN BEEN PUT IN PLACE? IF SO, WHAT DOES THE SAFETY PLAN SAY?
 5. HAVE THE CHILD(REN) BEEN TAKEN INTO PROTECTIVE CUSTODY? IF SO, WHEN? THE COURTS HAVE 48 HOURS TO CONDUCT A TEMPORARY CUSTODY HEARING ONCE PROTECTIVE CUSTODY IS TAKEN.
 6. IF THE CHILDREN WERE TAKEN, WHERE ARE THEY NOW? A RELATIVE?

DCFS INVESTIGATION BEGINS

7. IF THE CHILDREN WERE TAKEN AND THERE IS A SAFETY PLAN IN PLACE, IS THERE A VISITATION PLAN? SUPERVISED OR UNSUPERVISED? WHO IS ALLOWED TO SUPERVISE?

8. DID THE INVESTIGATOR RECOMMEND ANY SERVICES? INTACT? VOLUNTARY? USED AGAINST THEM?

9. IF THE PARENTS HAVE SPOKEN WITH THE INVESTIGATOR, DID THE INVESTIGATOR ASK FOR TWO COLLATERAL SOURCES TO SPEAK TO?

10. IF THE PARENTS HAVE SPOKEN WITH THE INVESTIGATOR, WHAT OTHER SOURCES DID YOU ASK THE INVESTIGATOR TO SPEAK WITH (COUNSELORS, TEACHERS, NEIGHBORS, THERAPISTS, PSYCHIATRISTS, DAYCARE PROVIDERS ETC.)

DCFS INVESTIGATION BEGINS

11. IF THE PARENT REQUESTED THE INVESTIGATOR TO REACH OUT TO CERTAIN SOURCES, HAS THE INVESTIGATOR IN FACT REACHED OUT TO THOSE SOURCES?

12. ARE THERE ANY DOCUMENTS THAT ARE IMPORTANT FOR THE INVESTIGATOR TO REVIEW (SCHOOL RECORDS, MEDICAL RECORDS, THERAPY RECORDS ETC.)? IF SO, HAS THE INVESTIGATOR REVIEWED THOSE DOCUMENTS?

13. IS THERE A CRIMINAL INVESTIGATION PENDING? IF SO, THE CRIMINAL ATTORNEY MUST BE CONTACTED IMMEDIATELY. FOLLOW THE CRIMINAL ATTORNEY'S RECOMMENDATIONS.

INTERVIEW WITH DCFS INVESTIGATOR

- SHOULD YOU BE PRESENT FOR THE INTERVIEW WITH YOUR CLIENT? FACTORS TO CONSIDER:
 1. WHAT IS THE Demeanor/RELATIONSHIP WITH THE INVESTIGATOR?
 2. HOW SEVERE ARE THE ALLEGATIONS?
 3. WHAT IS THE Demeanor OF THE PARENTS? (DEFENSIVE, FRUSTRATED, ANNOYED)
 4. CRIMINAL ATTORNEY? HAVE THE CRIMINAL ATTORNEY PRESENT
 5. JUDGED FOR HAVING AN ATTORNEY PRESENT? YES. BE AWARE OF YOUR Demeanor AS ATTORNEY

INTERVIEW WITH DCFS INVESTIGATOR

- IF YOU ARE PRESENT FOR THE INTERVIEW BETWEEN YOUR CLIENT AND THE INVESTIGATOR: WHAT SHOULD YOU LOOK FOR?
 1. WHEN THE INVESTIGATOR SAYS THEY DO NOT NEED TO CALL COLLATERAL SOURCES
 2. WHEN THE INVESTIGATOR SAYS “WE SHOULD BE ABLE TO CLOSE THIS OUT QUICKLY”
 3. HOW INTERESTED THE INVESTIGATOR IS IN THE PARENT(S)’ ANSWERS TO THE REQUIRED QUESTIONS
 4. IS THE INVESTIGATOR PROBING? ASKING A LOT OF QUESTIONS MANY DIFFERENT WAYS?
 5. WHAT IS THE SAFETY PLAN?

DCFS INVESTIGATION CONCLUDES

- MAY OR MAY NOT HAVE ANY COMMUNICATION WITH DCFS INVESTIGATOR UNTIL END OF INVESTIGATION
- LIMIT THE NUMBER OF PHONE CALLS/FOLLOW UPS. BE VERY POLITE NOT DEMANDING.
- I LIKE TO SEND AT LEAST ONE EMAIL WITH MY REQUESTS.
- ARE ANY SERVICES BEING RECOMMENDED? REQUIRED VS. RECOMMENDED?
- ONCE THE 60 DAYS HAS LAPSED YOU CAN FOLLOW UP AND REQUEST A FINDING (INDICATED OR UNFOUNDED). DCFS IS ALLOWED TO EXTEND 60 DAYS BASICALLY FOR WHATEVER THEY WANT.
- YOUR CLIENT WILL RECEIVE A LETTER IN THE MAIL STATING IF THE CASE HAS BEEN INDICATED OR UNFOUNDED. IMPORTANT TO KNOW HOW LONG THE INDICATION WILL STAY ON STATE CENTRAL REGISTRY.

DCFS APPEAL PROCESS

- REQUEST THE APPEAL: SIMPLY CHECK A BOX ON THE LETTER THE CLIENT RECEIVES AND REQUEST THE INVESTIGATION PACKET
- DUPUY PROCESS: EXPEDITED APPEAL PROCESS FOR PARENTS IN CHILD-RELATED EMPLOYMENT (35 DAYS FOR APPEAL PROCESS)
- WHAT TO LOOK FOR IN THE INVESTIGATION PACKET TO MAKE YOUR CASE:
 - REVIEW CAREFULLY NOTING THE ALLEGATIONS, WITNESSES, TIME LINE, EVIDENCE
 - DETERMINE IF THERE WAS ANYTHING THE INVESTIGATOR DID THAT HE OR SHE SHOULD NOT HAVE DONE
 - DETERMINE IF THERE WAS ANYTHING THE INVESTIGATOR FAILED TO DO
 - ARE THERE INACCURACIES IN THE INVESTIGATION PACKET?
 - IS THERE MISSING EVIDENCE?

DCFS APPEAL PROCESS

- DETERMINE IF THERE ARE WITNESSES THAT YOU WANT TO SPEAK WITH
 - SUBPOENA THE WITNESSES FOR PURPOSES OF TESTIMONY AND BE SURE TO SEND TO THE JUDGE
 - IF A JUVENILE CASE IS PENDING YOU MAY NEED TO GO THROUGH THE STATE'S ATTORNEY OR GET AN ORDER FROM THE JUDGE
 - IT IS NOT COMMON PRACTICE TO TAKE A DEPOSITION. IT IS ON THE OTHER PARTIES TO CONTACT THE POSSIBLE WITNESS(ES) AND QUESTION THEM ON THEIR OWN.

DCFS APPEALS PROCESS

- YOUR CLIENT WILL RECEIVE NOTIFICATION OF A PRE-HEARING WHICH IS BASICALLY A PHONE CONFERENCE WITH THE JUDGE AND DCFS LEGAL (FILE APPEARANCE)
- WHAT TO POSSIBLY EXPECT TO DISCUSS AT THE PRE-HEARING PHONE CALL:
 - POTENTIAL WITNESSES
 - EXHIBITS
 - POTENTIAL MOTIONS
 - WILL CHILD(REN) BE TESTIFYING
 - CHILD'S TESTIMONY MUST BE ESSENTIAL TO DETERMINATION
 - LIKELIHOOD OF INFLICTING EMOTIONAL HARM CAN BE MINIMIZED WITH CONDITIONS AND RESTRICTIONS AND THE CHILD'S TESTIMONY IS NECESSARY FOR THE INTERESTS OF JUSTICE; AND
 - NO ALTERNATIVE, SUCH AS STIPULATIONS OR TRANSCRIPTS FROM PRIOR COURT HEARINGS, EXIST THAT MAY BE USED TO SUBSTITUTE FOR CHILD'S TESTIMONY.

DCFS APPEALS PROCESS

- MITIGATION/SETTLEMENT PROPOSAL: POSSIBLE TO GET A VOLUNTARY DISMISSAL FROM DCFS
- OFFICIAL HEARING WILL NOT BE SET UNTIL YOU AND DCFS LEGAL ARE READY TO PROCEED (UNLESS THERE IS AN UNREASONABLE DELAY)
- MAY STIPULATE TO FACTS, EVIDENCE AND OR DOCUMENTS
- IF A JUVENILE CASE IS PENDING THE PROCESS IS DIFFERENT: STAYED AND POSSIBLE DISMISSAL IF FINDINGS MADE AT ADJUDICATION (DIFFERENT STANDARD: PREPONDERANCE VS. CLEAR AND CONVINCING)

DCFS APPEAL HEARING

- THE HEARINGS ARE HEARD BY AN ADMINISTRATIVE LAW JUDGE EMPLOYED BY DCFS. CONFLICT OF INTEREST??
- APPEAL HEARING DO'S:
 - HAVE WITNESSES READY TO TESTIFY AND DOCUMENTS READY TO ENTER.
 - INFORMAL. BE AWARE OF YOUR DEMEANER. OBJECTIONS ARE NOT COMMON.
 - KNOW YOUR AUDIENCE. BE "NICE" AS THESE ARE THE USUAL PLAYERS AND YOU ARE PLAYING ON THEIR HOME TURF.
 - FOCUS ON THINGS THE INVESTIGATOR DID THAT HE OR SHE SHOULDN'T HAVE
 - FOCUS ON THINGS THE INVESTIGATOR DID NOT DO THAT SHE OR HE SHOULDN'T HAVE (SPEAK WITH WITNESSES, LOOK AT CERTAIN DOCUMENTS, FOLLOW UP ON SOMETHING ETC.)
 - YOU CAN TRY TO CALL CHARACTER WITNESSES ALTHOUGH I PERSONALLY HAVEN'T HAD MUCH LUCK IN THIS AREA

DCFS APPEAL HEARING

- APPEAL HEARING DON'TS:
 - OBJECT CONSTANTLY. I KNOW THIS WILL FEEL HARD. BUT YOUR MESSAGE WILL BE LOST. ALJ'S JUST WANT TO HEAR WHAT PEOPLE HAVE TO SAY AND THEY CAN GET AROUND ANY OBJECTION BY SAYING "IT'S EVIDENCE THAT MAY BE PERTINENT TO WHETHER OR NOT THE CHILD WAS ABUSED OR NEGLECTED" WHICH STATUTORILY THE ALJ HAS A RIGHT TO SAY. I'M NOT SAYING DON'T EVER OBJECT- JUST BE MINDFUL
 - DON'T COME IN GUNS A BLAZING READY TO PROVE SOMETHING. IT TURNS THE ALJ OFF AND DOESN'T HELP YOUR CASE.
 - YES YOU SHOULD SHOW THAT THE INVESTIGATOR DID/DIDN'T DO CERTAIN THINGS BUT DON'T BLAST THE INVESTIGATOR. IT'S A FINE LINE. REMEMBER THE ALJ WORKS FOR DCFS.

DCFS APPEAL CONCLUSION

- 90 DAYS TO GIVE APPEAL DECISION FROM DATE OF REQUEST (UNLESS AGREEING TO CONTINUE)
- JUDICIAL REVIEW TO CHALLENGE APPEAL DECISION FROM ALJ
- HANDOUTS/RULES: ADMINISTRATIVE CODE TITLE 89 CHAPTER III(B) PART 336 THE ADMINISTRATIVE APPEAL HEARING.
- FAMILY DEFENSE CENTER- VERY EXTENSIVE PAMPHLET
- EXAMPLES OF CRIMINALLY INVOLVED CASE
- EXAMPLE OF MITIGATION SUCCESS



NOTIFICATION OF A REPORT OF SUSPECTED CHILD ABUSE AND/OR NEGLECT

Name

Date

Address

SCR No.

City, State, Zip Code

The Department of Children and Family Services has received a report of suspected abuse and/or neglect of the following children:

The reported abuse or neglect is alleged to have occurred at: _____

The reported abuse or neglect is alleged to have involved the following acts/omissions (allegations):

The purpose of the Department's investigation is to keep children safe. In most cases where child abuse or neglect is found, the Department will try to help families to improve their ability to protect children. This often involves obtaining social and other services for the family. In addition to obtaining services, the Department has the authority to take protective custody of children, if necessary to keep children safe, and may also involve the police and Juvenile Court.

You need to know:

THE INVESTIGATIVE PROCESS

1. The Department is required by a law called the Abused and Neglected Child Reporting Act, 325 ILCS 5/1 et seq., to conduct investigations into allegations of child abuse and neglect.
2. Within 60 days of the date of the report, unless there is good cause to take more time, the Department must complete its investigation.

3. During the course of the investigation, an investigator is required to interview certain witnesses, depending on the type of child abuse and neglect that is alleged and to **request an interview with you** as part of the investigation into these allegations.
4. You can refuse to be interviewed, however, if you refuse, your refusal could affect the outcome of the investigation and could be used against you.
5. You can give the investigator the names of other people who know what happened or who may have information about what happened. The investigator will contact at least two of these people.
6. The investigator will give you a brochure that more thoroughly explains the Department's investigative process. Department rules and further information can be found on the Department's website at www.DCFS.illinois.gov.

RESULTS OF THE INVESTIGATION

An investigation can result in an indicated report or an unfounded report. A report is indicated if the Department concludes that the incident of a child abuse and/or neglect occurred. A report is unfounded if the Department concludes that the incident of child abuse and/or neglect did not occur. If a report is indicated, the Department also makes a determination after consideration of all of the facts, as to whether a specific individual is responsible for the alleged child abuse or neglect.

You will be notified in writing of the outcome of the investigation and will have the right to appeal any indicated report if you are found to be responsible for the abuse or neglect.

STATE CENTRAL REGISTER

1. **The Law.** The Department of Children and Family Service is required by law to maintain a State Central Register of all reports of suspected child abuse or neglect, as well as the outcome of the investigation of these reports. The outcome of the investigation may include a determination that a specific person abused or neglected a child, or was responsible for the abuse or neglect. The law that governs this process is in the Abused and Neglected Child Reporting Act, 325 ILCS 5/1.

2. Length of Time on Register

- a. If you are indicated as the perpetrator of child abuse and/or neglect, your name will be placed on the State Central Register, unless the report is removed as a result of your appeal. Your name will remain on the State Central Register a minimum of 5 years. More serious reports may be retained for 20 or 50 years.
- b. If the report is unfounded, all identifying information concerning this report will be removed from the Department's files according to a schedule specified in 89 Ill. Adm. Code 431, Confidentiality of Personal Information of Persons Served by the Department.

3. **Who Can Get Information from the State Central Register.** The Department's State Central Register is not available to the public. However, employers or prospective employers of people who work with children can get information from the State Central Register. In addition, categories of people listed in the Abused and Neglected Child Reporting Act, 325 ILCS 5/11.1, which includes law enforcement personnel, physicians, and officials responsible for licensing people in professions that involve working with children, have access to the information kept on the State Central Register. This information can include whether you are listed on the State Central Register as being responsible for child abuse or neglect.

4. **Effect of Being Listed on the State Central Register.** The fact that you have been indicated as a perpetrator of child abuse or neglect and are therefore listed on the State Central Register may affect whether you will be able to obtain and maintain employment or a license needed to work with children, such as a license to operate a day care home.

5. **Appeal.** You may appeal the Department's decision to indicate you as a perpetrator of child abuse or neglect through the Department's administrative appeal process. This appeal will be before a neutral administrative law judge. Information about how to do this will be given to you in the event you are indicated.

6. **Juvenile Court and Criminal Court Cases.** An administrative appeal is different from a juvenile court case or a criminal court case. If you wish to appeal DCFS' indicated finding, you should file an appeal even if a juvenile court or criminal court case is pending.

IMPORTANT INFORMATION IF YOU ARE A CHILD CARE WORKER

1. Who is a "child care worker"?

"Child care worker" includes:

Employees who work directly with children, or owners/operators of facilities regardless of whether the facility is licensed by the Department of Children and Family Services. Types of facilities include:

- Child Care Institutions
- Child Welfare Agencies
- Day Care/Night Care Centers
- Day Care/Night Care Homes
- Day Care/Night Care Group Day Care Homes
- Group Homes
- Hospitals or health care facilities
- School personnel, including school teachers or administrators (but not tenured public school teachers or administrators who have other processes available to them)
- Employees who work with children in before and after-school programs, recreational programs, summer camps, or as full-time nannies

Persons actively engaged in the job placement process as a child care worker, a person currently enrolled in an academic program which leads to a position as a child care worker, or a person who has applied for a license required for a child care worker position. A person shall qualify as a career entrant only if, at the time of notice of investigation, that person (1) has applied or will apply, within 180 days, for a position as a child care worker; (2) is enrolled in or will commence, within 180 days, an academic program which leads to a position as a child care worker; or (3) has applied for a license as a child care worker. If you qualify under this section as a child care worker, you must tell the child protective service worker as soon as possible and provide documentation or other evidence of qualification as a child care worker.

Persons employed in one of the above settings or persons seeking employment, enrolled in an academic program or applying for a license for a child care position who are alleged to be responsible for child abuse or neglect outside of their employment. If the investigation relates to your personal life, but you are a child care worker in one of the above settings, an indicated finding may affect your employment and any license you hold that allows you to work with children. In that case, you may request an Administrator's Teleconference and still retain the right to appeal an indicated finding. **You must tell the child protective service worker that you want the investigation to be treated as an employment-related investigation** which means that you would receive a Notice of Intent to Indicate, an opportunity for an Administrator's Teleconference and an opportunity for an expedited hearing as outlined below.

2. **Notice of Intent to Indicate.** The Department will notify “child care workers” of its intention to indicate a report.

3. **Administrator’s Teleconference.** Before the decision to indicate is made, you have the opportunity to request a telephone conference with a Child Protection Administrator who has not been involved in the investigation. Further information about the telephone conference will be provided to you in the Notice of Intent to Indicate in the event the Department intends to indicate you as a perpetrator of child abuse and/or neglect.

4. **Expedited Appeal Hearing.** In addition to the Administrator’s Teleconference, you may also request an expedited appeal hearing. Further information about the expedited hearing also will be provided to you with the Notice of Intent to Indicate in the event the Department intends to indicate you as a perpetrator of child abuse and/or neglect.

Sincerely,

DCFS is an equal opportunity employer, and prohibits unlawful discrimination in all of its programs and/or services.

Child Protective Service Worker

Address _____

Telephone Number (____) _____

APPELLANT'S RIGHTS AND RESPONSIBILITIES ON APPEAL

1. Any person who has been named as a subject in an indicated or unfounded report of child abuse or neglect has the right to appeal any of the actions or inactions listed in that report. *Section 7.16 of the Abused and Neglected Child Reporting Act, 325 ILCS 5/7.16.* A person who appeals such a report is an "appellant".

Under the law, the department is required to issue a final administrative decision in your case within 90 days, not including any continuances that you request or dates that are determined by the agreement of the parties.

2. You may represent yourself, or an authorized representative may represent you. "Authorized representative" means a person, including an attorney, authorized in writing to assist in the appeals process. The appellant is responsible for paying all expenses related to his or her authorized representative.
3. You or your authorized representative **must** participate in both the pre-hearing conference and the hearing. If you do not do so, the administrative law judge will declare the appeal abandoned and will dismiss it. If your appeal is dismissed, you will not get a hearing and the indicated report will remain on the State Central Register.
4. If English is not your primary language, or if you are hearing impaired, the department will provide an interpreter, a sign interpreter, or other assistance to you upon your request at no cost. You may request that the department's investigative file and any other documents the department files or intends to introduce into evidence at the administrative hearing be translated into your primary language.

5. REQUESTING A CONTINUANCE

- To request a continuance, you must:
 - Contact the department (if the department wants a continuance, the department must contact you)
 - Inform the administrative law judge of the request and the reason for the request in writing. Please make sure the administrative law judge knows about the request prior to the hearing date.
- If the parties agree to the continuance, the administrative law judge will issue a continuance. If the parties do not agree, contact the administrative law judge and a conference call will be scheduled to resolve the issue.

6. EXCHANGE OF INFORMATION

- At or before the pre-hearing conference, you should request a list of witnesses the department attorney intends to use at the hearing, that list must be provided to you.
- The department attorney should also ask you for the same information. You must provide this information upon request. If you and/or the department attorney do not provide the requested information, the administrative law judge may prohibit you from submitting the information at the hearing.
- A redacted copy of the investigative file will automatically be sent to you.

7. SUBPOENAS

- If you want the Administrative Hearings Unit to subpoena witnesses, you must submit a request in writing at least **fifteen (15)** days before the hearing. The request must include the names and addresses of the witnesses.
- A request for a subpoena included in your written appeal request is not valid and must be submitted again.
- Send the request for subpoenas to:
Subpoena Request
Department of Children and Family Services
Administrative Hearings Unit
17 North State Street, 7th Floor
Chicago, IL 60602
- NOTE: If either you or the department asks that a child under 14 years of age be subpoenaed to testify or be involved in the hearing process, the person calling the child **MUST** demonstrate all of the following:
 1. The child's testimony or involvement is essential to a determination of an issue on appeal;
 2. That there is no likelihood of inflicting emotional harm to the particular child(ren) involved; AND
 3. That no alternatives, such as stipulations or transcripts from prior court hearings, exist which may be used as a substitute for the child's testimony.

8. MOTIONS

- You and the department both have the right to file motions.
- All motions must be filed with the administrative law judge at least ten (10) calendar days before the hearing.

9. PRE-HEARING CONFERENCE

- You or your authorized representative, the department attorney and an administrative law judge will meet, usually by telephone, to discuss the following:
 - Admonishments
 - The procedures that will be used at the hearing
 - Trying to narrow the issues
 - Exchanging information and possible agreements
- You do not need to make any phone calls. The Administrative Law Judge will place all calls.
- At the pre-hearing conference, you must be prepared to:
 - Tell the administrative law judge who you will call as a witness during the Administrative Hearing and discuss the scheduling of those witnesses.
 - Tell the administrative law judge what records and documents you intend to use at the hearing and whether you have given copies to the department attorney.
 - Discuss whether you and the department can agree to any facts.
 - Argue any motions filed by either party.
- At the pre-hearing conference, the department attorney must be prepared to tell the administrative law judge which witnesses it intends to call at the hearing, discuss scheduling of those witnesses and must disclose the records and documents it will use at the hearing.

10. ADMINISTRATIVE HEARING

- At any time before or during the hearing, you may withdraw your appeal.
- At any time before or during the hearing, the department may expunge the indicated finding or amend the indicated finding to delete any information, which identifies the appellant as a perpetrator.
- At the hearing, the department must prove its case against you by a preponderance of the evidence. This means it must show that it is more likely than not that the allegations occurred.
- The hearing will be recorded. If you wish to have the proceedings recorded by a certified court reporter, you may do so at your own expense.
- During the hearing, both you and the department have the right to:
 - Present and question witnesses;
 - Present any information relevant to the issues;

- Question or disprove any information, including the opportunity to question opposing witnesses; and
- Dispose of any disputed issue by mutually agreeing to a resolution any time before the hearing ends.

11. ADDING OR CHANGING ALLEGATIONS

- Before the hearing begins, the department may add or amend the allegations that support the indicated finding against you. If this occurs, the department attorney must notify you and the Administrative Hearings Unit of the new amended allegation in writing, and must provide you with a concise statement of the facts that form the basis of the new or amended allegation.
- If the department adds or amends an allegation less than ten (10) days before the hearing date, you have a right to a continuance to prepare for the hearing.

IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE
ADMINISTRATIVE HEARINGS UNIT AT 217-782-6655

Joint Committee on Administrative Rules
ADMINISTRATIVE CODE

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER b: PROGRAM AND TECHNICAL SUPPORT
PART 336 APPEAL OF CHILD ABUSE AND NEGLECT INVESTIGATION FINDINGS
SECTION 336.105 THE ADMINISTRATIVE APPEAL HEARING

Section 336.105 The Administrative Appeal Hearing

The administrative appeal hearing shall consist of a pre-hearing conference and a hearing date during which testimony is taken and evidence is received. The appellant or the appellant's authorized representative shall be prepared to participate at all pre-hearing conferences and hearings. Hearings shall be recorded; however, any party wishing to have the proceedings recorded by a certified court reporter may do so at the party's own expense.

- a) **Pre-Hearing Conference**
The pre-hearing conference shall be convened by telephone unless the ALJ and the parties agree that the pre-hearing conference shall be held in person. The ALJ shall place all telephone calls. The cost of telephone calls will be borne by the Department. The AHU shall arrange for the appellant to use a telephone at a Department Field Office if the appellant has previously notified the Department that he/she does not have access to a telephone.
 - 1) At the pre-hearing conference, the ALJ shall provide the parties with standard admonishments that shall include a statement of the rights of the parties and the right to have a timely hearing within the applicable timeframe, as well as the setting of dates for the administrative appeal hearing.
 - 2) During the pre-hearing conference, the appellant and the Department should be prepared to discuss:
 - A) potential witnesses;
 - B) exhibits that might be offered;
 - C) timeframes for the administrative appeal hearing;
 - D) any potential motions that could be filed;

- E) any other issues that would impact the timing and length of the administrative appeal hearing, such as, but not limited to, whether any of the witnesses require a special accommodation or a translator; and
 - F) The Department's legal representative and the appellant and his or her representative have an affirmative duty to determine if there is, and to report to the ALJ before any hearing is scheduled, any pending criminal case or juvenile court case concerning the circumstances that gave rise to the indicated report.
- b) The ALJ shall address the following issues during the pre-hearing conference:
 - 1) If the appellant asserts, at the pre-hearing conference, that he or she is a child care worker who was not afforded an Administrator's Teleconference during the child abuse and neglect investigation (see 89 Ill. Adm. Code 300 (Reports of Child Abuse and Neglect)), the appellant may request a review of the investigation. The ALJ may request documentation to validate the child care worker status of the appellant. The review shall be conducted jointly by the Division of Child Protection and the Office of Legal Services and shall determine if the case should be unfounded or if a hearing date will be set. The review must be conducted within 14 days from the date of the pre-hearing conference in which the appellant claims he or she is a child care worker who was not afforded an Administrator's Teleconference during the child abuse and neglect determination. Any time expended for the review process will be attributed to the appellant and not to the Department (see Section 336.220(a)(1) or (2)).
 - 2) Whether parties have exchanged lists of the names of persons who may provide testimony during the administrative hearing.
 - 3) Whether children may testify or be involved in the hearing.
 - A) Either party requesting that a child be subpoenaed to testify or be involved in the hearing process must demonstrate at the pre-hearing conference that:
 - i) the child's testimony or involvement is essential to a determination of an issue on appeal;
 - ii) the likelihood of inflicting emotional harm to the particular child involved can be minimized with

conditions and restrictions and the child's testimony is necessary for the interests of justice; and

- iii) no alternatives, such as stipulations or transcripts from prior court hearings, exist that may be used as a substitute for the child's testimony.

B) In determining whether a child will testify, the ALJ must consider, when available, the opinion of the child's treating clinician regarding the impact on the child if the child is permitted to testify or not permitted to testify, and how any negative impact could best be minimized for the particular child.

- i) The ALJ must balance the hardship on the child, taking into account possible restrictions or modifications described in subsection (c)(3)(B)(ii), against the interests of justice and the harm to the child if an appeal is improperly denied or an indicated finding is improperly expunged.

- ii) If an ALJ allows a child to testify, the ALJ may set any conditions or restrictions, and may use any techniques allowed in any juvenile, civil or criminal court (including but not limited to in camera interviews, video conferences, questions submitted in writing, exclusion of parties to the proceeding (including but not limited to the parents), or change of hearing room or location) that will help minimize any emotional impact on the child.

4) Whether:

- A) the parties agree to hold the hearing by telephone or video conference;
- B) whether witnesses should be scheduled to testify at specific times;
- C) there are any witnesses, such as medical professionals, that should be permitted to testify telephonically; and
- D) whether there are any non-professional witnesses who should be allowed to testify telephonically.

5) Whether the parties have or will have exchanged records or documents prior to the administrative hearing.

- 6) Whether the parties can agree upon any facts as true.
- 7) Motions Filed by Any Party
 - A) Any motions from the appellant or the Department shall be filed with the ALJ and served upon the AHU and the opposing party within a reasonable time prior to the hearing.
 - B) Any motion that is consistent with administrative practice and procedure and does not infringe upon the Director's authority may be heard.
 - C) Motions filed shall be filed in accordance with any motion practice and timelines established by the ALJ responsible for hearing the case.
 - D) If any party believes that a finding in a juvenile court proceeding is dispositive to an issue on a pending administrative appeal, he or she may file a motion, with supporting documentation, requesting the appropriate relief.
- 8) The need of either party for an interpreter in his/her preferred language or for communication assistance.
- 9) Whether any juvenile or criminal cases related to the indicated finding on appeal are pending in circuit court. If the ALJ discovers during the pre-hearing conference that there is a pending juvenile or criminal case arising from the same set of facts as the indicated finding, the appeal will be dismissal as premature. The perpetrator shall be informed orally that, within 60 days after the conclusion of any criminal court action in the circuit court, or after adjudication in any juvenile court action concerning the circumstances that give rise to an indicated report, he or she may again file a request, except that there shall be no such right to a hearing on the ground of the report's inaccuracy if there has been a court finding of child abuse or neglect or a criminal finding of guilt as to the perpetrator. The dismissal order shall also state that the perpetrator may file an administrative appeal within 60 days after the conclusion of the criminal court action in circuit court or after adjudication in any juvenile court action, except that there shall be no right to an administrative appeal if there has been a court finding of child abuse or neglect or a criminal finding of guilt as to the perpetrator.
- 10) Upon notification from the Department's legal representative or the perpetrator that a criminal or juvenile court action is pending, based on

the same facts or circumstances as the administrative expungement appeal, the appeal will be dismissed as premature. The dismissal order shall state that the perpetrator may file an administrative appeal within 60 days after the conclusion of the criminal court action in circuit court or after adjudication in any juvenile court action, except that there shall be no right to an administrative appeal if there has been a court finding of child abuse or neglect or a criminal finding of guilt as to the perpetrator.

(Source: Added at 41 Ill. Reg. 15260, effective December 6, 2017)