

FAMILY LAW

Handling a Referral to the Division of Child Protection and Permanency

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When the Division of Child Protection and Permanency (“DCPP” or “the Division”) becomes involved in any family matter, and one considers the complexity surrounding DCPP investigations for potential abuse and neglect, it is reasonable to expect a client to feel uneasy and anxious. However, whether directly or tangentially, DCPP involvement should be a situation that family law counsel can help clients navigate with confidence.

Types of Cases

DCPP cases can have two different proceedings. There is an administrative proceeding that commences once a referral is made to DCPP, which is handled by the Department of Children and Families (“DCF”).

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Litigation may also commence in New Jersey Superior Court under the FN docket, where DCF is represented by the Attorney General’s Office.

The administrative case is commenced upon the report of an act of abuse, abandonment, cruelty, or neglect of a child to the Division. N.J.S.A. 9:6-1. Any act covered under N.J.S.A. 9:6-1 should be reported to DCPP, and everyone has a duty to report. DCPP, a police officer, or a designated employee of the Probation Division may also remove a child, even without a court order, if they believe the child faces “an imminent danger to his/her life, safety or

health.” N.J.S.A. 9:6-8.29. If there is an emergency removal of a child, without court order, the Division must make every reasonable effort to communicate immediately with the child’s parent or guardian that such emergency removal has been made, provide them with the location to which the child has been taken, and advise the parent or guardian to appear in the appropriate Superior Court, Chancery Division, Family Part within two court days. N.J.S.A. 9:6-8.30.

If any act of domestic violence contained under N.J.S.A. 2C:25-19 is committed in the presence of a child, it must be reported to DCPP

by responding authorities, including responding police officers, firefighters, EMT's, and other medical or emergency professionals involved in the domestic violence incident. In the event a domestic violence incident is not reported to DCPD by a responding authority, it should be reported by the Judiciary upon the victim obtaining the Temporary Restraining Order.

What is the Timeline for DCPD Investigations?

Because each investigation concerns unique circumstances, one can never know for certain how long the Division will be involved with a family. However, statutory and administrative guidelines provide a timeframe from initial referral to completion and closing of the investigation. Within 24 hours from the time a referral of abuse or neglect is reported to the division, it must address the referral and initiate an investigation. N.J.S.A. 9:6-8.11. Each investigation will be assigned a caseworker from the Division's county offices.

The Division caseworker must provide any person (adult or child), or any person referred to the Division for services, with all information set forth in N.J.A.C. 3A:11-1.6. This information includes: (1) Helping ensure that the family's children are safe and protected from abuse or neglect; (2) Explaining why the Division is involved with a family; (3) Telling the applicant what is expected from him or her, and his or her children; (4) Explaining to the family the procedures to obtain the services requested; (5) Providing

only those services agreed upon, unless there is a court order, or as otherwise authorized under statute (*see* N.J.S.A. 30:4C-12, 15; N.J.S.A. 9:6-8.18, 29); (6) Listening and offering to help find solutions to problems; (7) Discussing progress on a regular basis; (8) Informing the client of changes in services that may affect the family; (9) Explaining when and under what circumstances the Division will terminate its involvement with the family; (10) Explaining that, for child protection investigations, collateral contacts will be made and for what purpose within the limitations of N.J.S.A. 9:6-8.10 (a); (11) Explaining the purpose of collateral contacts in child welfare services, and that collateral contacts shall be made with the client's consent; and (12) Explaining that depending upon the service received and the client's financial circumstances, the client may have a responsibility to reimburse the Division or pay directly for the service. N.J.A.C. 3A:11-1.6.

If there is no immediate removal of the child, most investigations will be completed within 60 days of the first contact the Division. *See* New Jersey Department of Children and Families Policy Manual (2013) *available at* https://www.nj.gov/dcf/policy_manuals/CPD-III-C-8-100_issuance.shtml. All Division investigations must include a risk assessment at least 30 days prior to closing an investigation. Investigations may be extended for "good cause." *Id.* As counsel you should be aware the phrase "good cause" may encompass

varying reasons, but most recently the extension for all investigations has been due to the COVID-19 pandemic and the restrictions placed on home visits, in-person meetings, and any other in-person service restrictions.

What Happens after the DCPD Investigation?

Upon completion of the investigation, the Division will issue a "findings" letter pursuant to N.J.A.C. 3A:10-7.8(a) with one of four findings, ranging from "Unfounded" to "Substantiated" as follows:

1. An allegation shall be "*substantiated*" if the preponderance of the evidence indicates that a child is an "abused or neglected child" as defined in N.J.S.A. 9:6-8.21, and either the investigation indicates the existence of any of the circumstances in N.J.A.C. 3A:10-7.4, or substantiation is warranted based on consideration of the aggravating and mitigating factors listed in N.J.A.C. 3A:10-7.5.

2. An allegation shall be "*established*" if the preponderance of the evidence indicates that a child is an "abused or neglected child" as defined in N.J.S.A. 9:6-8.21, but the act or acts committed or omitted do not warrant a finding of "substantiated" as defined in (c)1 above.

3. An allegation shall be "*not established*" if there is not a preponderance of the evidence that a child is an abused or neglected child as defined in N.J.S.A. 9:6-8.21, but evidence indicates that the child was harmed or was placed at risk of harm.

4. An allegation shall be “unfounded” if there is not a preponderance of the evidence indicating that a child is an abused or neglected child as defined in N.J.S.A. 9:6–8.21, and the evidence indicates that a child was not harmed or placed at risk of harm.

See N.J.A.C. 3A:10-7.3 (c).

Except for a finding of “unfounded,” all DCF findings are subject to administrative appeal and should be accompanied by a summation of facts that support the finding as determined in the noteworthy case of *S.C. v. New Jersey Department of Children & Families*, 242 N.J. 201, 219 (2020). In *S.C.*, the Division’s finding was “not established.” The New Jersey Supreme Court held that the minimal requirements of due process—“notice and opportunity to be heard”—could be satisfied without an adversarial hearing where an investigatory finding was “not established,” but the court stressed that the notice given must set forth the basis of the finding, rather than rely on a conclusory statement, and that the opportunity to be heard must be real. Thus, in accord with the holding in *S.C.*, all findings rendered by the Division should be accompanied by a summation of the facts. Any appeal of a finding must be made within 45 days from the date the Division’s findings are issued.

If litigation is opened under the FN docket, all biological parents or any legal caregivers will become defendants. This is true even if the children are placed with one of those parties because services will be opened for the entire family.

N.J.S.A. 9:6-8.10a expressly permits DCF to release child abuse/neglect investigatory records, reports and findings to the legal counsel of a child, parent or guardian, whether court-appointed or retained, when information is needed to discuss the case in order to make decisions relating to or concerning the child. Further, any person appealing a substantiated finding of child abuse or neglect, and his/her attorney or authorized law representative, can request records upon the determination by the Division. The statute permits the release of those records to a court or the Office of Administrative Law, upon its finding that access to such records may be necessary for determination of an issue before it, and such records may be disclosed by the court or the Office of Administrative Law in whole or in part to the law guardian, attorney or other appropriate person upon a finding that such further disclosure is necessary for determination of an issue before the court or the Office of Administrative Law.

If the family matter you are handling is directly impacted by

the Division’s investigations and findings, you may seek review of these records under N.J.S.A. 9:6-8.10 through motion, which must be served upon the Office of Attorney General. Any records to be released must be specifically requested, and the motion should be accompanied by a certification as to why the records are necessary for a determination, and the motion must be accompanied by a proposed protective order for the release of these records. The Office of the Attorney General will have an opportunity to respond to all motions. Should the request for records be approved, the Chancery Division Judge will make the determination of which records are necessary to be reviewed and will allow an in camera review of those records.

Because abuse or neglect of a child can take many forms, every case is unique. While some investigations are closed within a few months, others with allegations that rise to the level of litigation can extend up to two years or more in some rare cases. The most important job as counsel, especially representing a biological parent during a DCPPI investigation, is to help them understand the investigatory process, the Division’s findings, and consistently inform them of their rights and responsibilities. ■

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