

Family Legal Care

ABCs of Family Court

Large Print Edition

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This document should not take the place of a consultation with a lawyer. Family Legal Care encourages all individuals involved with the Criminal and Family Court systems to consult with a lawyer.

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18-B: An attorney who represents a person in court, with no cost. A judge decides who can get an 18-B attorney based on the kind of case and the person's income. The person must be low income to qualify. The cost for the attorney is paid for by the county. Also called assigned counsel or a panel attorney.

1027 Hearing: A hearing held after a child is removed from their home without a court order because of suspected child abuse or neglect. This hearing must be held as soon as possible to determine if the child should be sent to foster care or returned home. 1027 is

a section in the Family Court Act. Also called an intake hearing.

1028 Hearing: If a child is removed from a parent's home for child abuse or child neglect, the parent can request a 1028 hearing. At the hearing, the court will decide if the child would be at "imminent risk" (immediate danger) if returned home. The hearing must be held within 3 days after the parent, or the parent's lawyer, asks for it. 1028 is a section in the Family Court Act.

A

Acknowledgment of Parentage (AOP): A form usually filled out by unmarried parents or married couples who use assisted reproduction in order to establish the legal parents of a child. The form is often filled out at the hospital.

Adjourn: To temporarily postpone or reschedule a case for a later time or on another day.

Adjournment in Contemplation of Dismissal (ACD or ACOD): When a judge puts off making a decision on a case. This is done to see if the respondent follows all of the directions given by the court. If the respondent follows all of the directions, the case might be dismissed. Depending on the kind of case, the decision might be put off 6 to 12 months. See Respondent.

Adjudicate: The formal word for deciding a case in court.

Admission: When a person tells the court, under oath, that they did the actions that they have been accused of.

Adolescent Offender (AO): A person age 16 or 17 who is charged with a felony offense. AOs have their cases heard in the Youth Part of Supreme Court. Cases may be transferred to Family Court. If the case is transferred to Family Court, the child will be treated as a Juvenile Delinquent. See Juvenile Delinquent.

Adoption: The granting of permanent legal rights and responsibilities for a child to one or two individuals other than the child's biological parents.

Adoption and Safe Families Act (ASFA): A federal law that requires that a child who has been in foster care for 15 or more of the past 22 months be returned home, or steps must be taken for adoption of the child.

Affidavit: A sworn statement made in writing, signed, and notarized.

Allegation: An unproven fact.

Appeal: When you ask a higher court to review or look at an order or decision made by the trial or family court to see if it was done correctly.

Appellant: The person who asks for an appeal.

Appellate Division: The court that hears appeals.

Arrears: Unpaid child or spousal support, a debt.

Article 10: The section of the Family Court Act that covers child abuse and child neglect cases. Sometimes abuse and neglect cases are called “Article 10 cases.”

Article 78: A special proceeding brought to challenge the acts or decisions of an administrative agency. Petitions must be filed in Supreme Court.

Article 81: A special proceeding under the Mental Hygiene Law to name a person as the guardian of another adult. Once appointed, the guardian has the duty of taking care of the person and managing the property and rights of that person, who is not able to take care of his or her own affairs. These are filed in Supreme Court.

Assigned Counsel: A free attorney who represents a person in court. See also 18-B.

Assistant County Attorney/Assistant Corporation Counsel: A lawyer who represents the county, city, or an agency of either. The lawyer works on cases involving juvenile delinquency, child abuse and neglect, and interstate child support cases.

Assistant District Attorney (ADA): A lawyer who represents the state in criminal prosecutions (for adults).

Attorney for the Child: An attorney assigned by a judge to represent one or more children in court.

B

Bench warrant: An order issued by a judge ("from the bench") for the arrest of a person who did not come to court when ordered.

Best interests: The standard a Family Court judge uses when making decisions about a child. The judge will look at many things when figuring this out. The standard does not mean

who loves the child more or who has more money. It does not favor a mother over a father, even if the case involves a young child.

Brief: A written document submitted by a party to a case that explains the relevant facts and law.

Burden of proof: This relates to who is responsible for proving the allegations in a case, and how much proof is required. In Family Court, an allegation must be proved by a "preponderance of the evidence." In criminal court it must be proved "beyond a reasonable doubt."

C

Change of Venue: Moving a case to another jurisdiction for legal reasons.

Child abuse: The harming of a child through physical, sexual, mental, or emotional injury.

Child Neglect: The failure to properly care for a child. This can include failure to provide

enough food, shelter, clothing, or appropriate supervision. It can include failure to provide adequate education or medical care. It can also include alcohol or drug use.

Child Protective Proceeding: A case brought under Article 10 of the Family Court Act, involving child abuse or child neglect.

Child Protective Services Worker: The person from the county or city child protective agency (In New York City this is New York City Children's Services) who investigate charges of child abuse and child neglect.

Child Support Enforcement: The Child Support Services (CSS) program establishes and enforces child support, monitors collections and disbursement of child support payments, establishes paternity (legal fatherhood) for children born outside of marriage, and locates absent parents when necessary. In New York City, CSS is part of the Department of Social Services.

For information about child support and enforcement, call the New York State Child Support Hotline at

1-888-208-4485.

Citation or Cite: A group of numbers, letters, and names used to identify a previously decided legal case.

Commit: The power of a court to order a person to a correctional institution, mental hospital or juvenile facility.

Consent: Agreeing to something. A court order made "on consent" means that the parties agree to what is in the order.

Contempt of Court: An act done with the intent to disrespect, hinder, or prevent an order from the court. Contempt also means when a person does not do what a court order says they must do.

Counsel: Another word for attorney or lawyer.

Court Appointed Special Advocate

(CASA): An agency that is appointed by a judge to monitor and report to the Family Court on foster care placement cases. An individual who works for or volunteers with the agency may also be referred to as “a CASA.” Ask your local Family Court if this agency is available in your county.

Court Attorney: A lawyer who works for a judge helping with legal research, drafting decisions, conferencing cases, and reviewing orders.

Court Clerk/Court Assistant: A court employee who works with a judge. The employee prepares court orders for signature, schedules cases, and helps ensure the availability of interpreters.

Court Officer/Deputy Sheriff: A uniformed guard who maintains order in the courtroom and public areas of the courthouse. Court officers are assigned to every courtroom. They may call parties into the hearing, administer

oaths, and bring respondents to the courtroom from detention facilities in the building.

Cross-Examination: The questioning of a witness called by the other party to a case.

Cross-Petition: Called a counterclaim in other courts. A petition by the respondent that is in conflict with the original petition filed by the petitioner.

Custodial Parent: The parent who lives with the child.

Custody and Detention: The act of arresting a young person. After the juvenile is taken into custody, he or she may be detained, or held, for a limited period of time in a locked facility.

D

Default: When a party does not answer the papers or come to a scheduled court date in a set period of time.

Department of Social Services (DSS): The services provided by DSS vary by county. Services usually include temporary financial assistance, child care assistance, and medical assistance (Medicaid) for those who qualify. In New York City, the Child Support Services (CSS) program is contained within the DSS. The CSS program establishes and enforces child support orders, monitors collection and disbursement of child support payments, establishes paternity (legal fatherhood) for children born outside of marriage, and locates absent parents when necessary.

Designated Felony Act: An act committed by a person age 13, 14, 15, 16, or 17 which if committed by an adult would constitute one of the following crimes: murder, kidnapping, arson, assault, criminal sexual act, aggravated sexual abuse, manslaughter, rape, burglary, or robbery.

Discovery: How one party obtains information or facts about the case from the other side. There are different rules in the law

about how discovery works in different kinds of cases.

Dismissal: The termination or ending of a court case. Cases can be dismissed “with prejudice” or “without prejudice.” If a case is dismissed “with prejudice” the person cannot file the case again. If the case is dismissed “without prejudice” the person can file the case again.

Dispositional Hearing: A hearing that takes place after the fact-finding hearing where a judge makes a final ruling. See Fact-Finding Hearing.

Dispositional Order: The final order entered by the judge following a dispositional hearing.

Docket Number: The unique letter and numbers assigned to a case. In Family Court Docket Numbers start with a letter that indicates what kind of case it is, followed by a unique set of numbers, ending with two digits that indicate the year the case started.

E

Educational Neglect: A type of neglect. See Child Neglect.

Emancipation: The court deciding that a person who has not reached full legal age (21) is self-supporting and independent of parental control. There is no court order for emancipation in New York State.

Equitable Estoppel: Typically used in paternity cases to determine who is the legal father of a child. It means that because someone has already been acting as the father of a child for an extended period of time, he is considered the father even if he is not the biological father.

Evidence: Proof used to support or rebut facts.

Ex parte (ex par'te): Communication with the judge on a case without the other party being present. Ex parte communication is not allowed except in very limited circumstances.

F

Fact-finding Hearing: A hearing to determine whether the **allegations** of the **petition** have been proven. This is called a trial in other courts.

Family Court Act: The New York State law that sets forth the powers of and types of cases in Family Court.

Family Offense: One of the following acts, if committed by a family member, a person to whom you are married or used to be married, a person with whom you have a child, or a person with whom you had an intimate relationship: disorderly conduct; unlawful dissemination or publication of an intimate image; harassment; aggravated harassment; stalking; criminal mischief; menacing; reckless endangerment; assault; attempted assault; sexual misconduct; forcible touching; criminal obstruction of breathing or blood circulation;

strangulation; sexual abuse; identity theft; grand larceny; or coercion.

Family Treatment Court: A special courtroom that hears child abuse and child neglect cases involving parents with substance abuse problems.

Felony: A crime punishable by imprisonment for more than one year.

Forensic Evaluation: The use of a psychologist or other qualified person to examine parties. The forensic examiner writes a report to help a judge make decisions in custody and visitation cases.

G

Garnishment: A way of collecting money or property to pay back a debt. Often wages are garnished in child support and spousal support

cases, meaning money is taken directly from a paycheck.

Good Cause: A legally sufficient reason.

Group Home: A facility with a number of foster children who live there under adult supervision.

Guardian ad Litem (GAL): An individual appointed by the court to represent an infant or an adult who is mentally or physically unable to speak for themselves. The GAL can also stand in place of a parent who is unable to appear in court.

Guardian: A person who is legally responsible for the care and management of a person or a person's property. Usually the person is a minor or an adult who cannot take care of him or herself.

H

Habeas Corpus: The name given to a variety of court orders (called writs) whose primary

purpose is to bring a person before a court or judge to determine if that person is being deprived of their liberty against the law. Writs of habeas corpus are sometimes used to order a parent or guardian to bring a child to court, when that person may be violating a court order of custody or visitation.

Hearing

Examiner: A person, like a judge, who can make decisions in support and paternity cases. Decisions made by hearing examiners can be appealed to a judge by filing an objection. Also known as a support magistrate.

Hearsay: Evidence not based on the personal knowledge of the witness.

I

Imputed Income: In a case for child or spousal support, the amount of income the court attributes to a person based upon past income, ability to earn, educational background, etc. An order of support can be made based upon the imputed income instead of a person's current reported income.

Income Execution: A way to satisfy a court order for an amount of money by taking a portion of the person's wages directly from their paycheck. This is used in child support and spousal support cases. Also referred to as garnishing wages.

Integrated Domestic Violence (IDV)

Court: A special court part that hears all aspects of domestic violence cases – including Family Court and Criminal Court cases – based on a one-family/one-judge model.

Interrogatories: Written questions given by one side to the other which must be answered in writing. Interrogatories can be part of the discovery process in a case.

Interpreter: A person who translates for litigants with limited English language ability or hearing impaired litigants in any part of the courthouse.

J

Joint Legal Custody: When both parents share legal custody of the child. This means they must make important decisions together about their child. They share this responsibility regardless of which parent primarily lives with the child. See Legal Custody.

Judge: The person who is in charge of the courtroom, listens to witnesses, examines evidence, and decides any legal questions that come up during the case. The judge determines the outcome of the case and issues any necessary orders.

Judicial Hearing Officer (JHO): A former or retired judge who hears contested paternity, custody and visitation, and order of protection

cases in Family Court. Usually JHOs hear cases and report their recommendations to a judge. The judge then determines the outcome of the cases.

Jurisdiction: The court's ability to decide a case. Subject matter jurisdiction means the type of case a court is allowed to hear. Personal jurisdiction means the court has the power to order someone to do something or not to do something.

Juvenile Delinquent: A person at least 7 years of age but under 18 who commits an act that, if committed by an adult, would constitute a crime.

Juvenile Offender: A person age 13-15 who commits a serious or violent felony. Cases may be transferred to Family Court. If the case is transferred to Family Court, the person will be treated as a juvenile delinquent. See Juvenile Delinquent.

K

Kinship Care: When a child is being cared for by an adult relative other than a parent.

L

Law Guardian: An old term for an attorney assigned by a judge to represent a child in court. "Law Guardians" are now called "Attorneys for the Child."

Legal Custody: When an adult has the responsibility of making important decisions – such as medical or religious decisions – about the life of a child.

Lien: A claim or charge on property for payment of a debt.

M

Matrimonial: Having to do with marriage.

Mediation: A method of resolving a dispute outside of court. It involves a neutral third party who tries to help the parties reach an agreement.

Medical Neglect: A type of neglect. It includes not taking a child to a doctor for necessary medical treatment. See Child Neglect.

Misdemeanor: An offense punishable by a fine or imprisonment of up to one year.

Modification: Changing all or part of a court order.

Motion: An oral or written request made by a party to the court for specific relief.

N

New York State Central Register of Child Abuse and Maltreatment (SCR): A state Hotline that receives telephone calls alleging child abuse or child neglect. The SCR gives

information from the calls to the local child protective agency for investigation, monitors their response, and identifies if there are prior child abuse or neglect reports about the family.

Non-Custodial Parent: The parent with whom the child does not live most of the time.

Non-Secure Detention Facility: A facility for detained children characterized by the absence of locks, guards and similar security measures.

O

Objection: (1) The process by which a petitioner or respondent can appeal a decision made by a support magistrate. The appeal is made to a Family Court judge. (2) The act of expressing disagreement with a statement or ruling in a case.

Office of Court Administration (OCA): The administrative branch of the New York State court system. OCA is overseen by the Chief

Judge of the Court of Appeals. It supervises the standards, administrative policies, and operations of the trial courts, including Family Courts, throughout the state.

Open Adoption: An adoption in which both the adoptive and the biological parents agree to share specified information about or communication with the child.

Order: A written directive or command by the court.

Order of Custody: An order determining who the custodial parent of the child will be.

Order of Filiation: An order establishing who is the father of a child. This order establishes the child's legal right to support and inheritance from the father. It also establishes the father's right to seek custody and visitation.

Order of Protection: An order issued by a judge that limits the interactions between two people so that one person will be protected

from the harmful or risky actions or behaviors of the other.

Order of Support: An order entered by a support magistrate or judge, directing that a specified amount of money be paid to the petitioner for a child or a spouse.

Order of Visitation: An order issued by a judge, determining the schedule and conditions of visitation of non-custodial parents. Also called parenting time.

Order to Show Cause: A court order directing someone to appear in court on a specific time and date in order to explain why a particular order should not be made.

P

Panel Attorney: An attorney who represents a person in court at no cost. See 18-B.

Parole: The supervised release of a juvenile pending a dispositional hearing in a juvenile delinquency case. Also, the release of a child

to a parent pending the outcome of a child protective proceeding.

Parentage: The legal status of being a parent.

Part: A courtroom.

Paternity: The legal status of being a father.

Permanency Hearing: A proceeding, held 8 months after a child has been placed in foster care, and every 6 months after that. At the hearing, the judge reviews the permanency plan which says where the child will live permanently.

Permanency Plan: A plan to determine where a child who was placed in foster care will live permanently. There are 5 possible options: return the child to the parent; adoption; legal guardianship; permanent placement with a fit and willing relative; and placement in another planned permanent living arrangement, such as independent living.

Person In Need of Supervision (PINS): A person under age 18 whose behavior is beyond the control of a parent or other lawful authority, and who a judge decides is in need of court-ordered supervision.

Petition: The written document that forms the basis for a Family Court proceeding.

Petitioner: The person or agency that begins a case by filing a petition. Known as the “plaintiff” in other courts.

Physical Custody: Being responsible for caring for a child’s everyday needs. Usually the child lives primarily with the adult who has physical custody of them. Also known as residential custody.

Preventive Services: Help provided to a family when a child is at risk of being removed from a home and put into the foster care system due to child abuse or neglect.

Private Placement Adoption: An adoption which occurs outside of the foster care system.

Probable Cause Hearing: A hearing to determine if there is a good reason to hold a child in detention pending the outcome of a juvenile delinquency case.

Probation: Court-ordered supervision of a child who is declared a juvenile delinquent or a PINS. Probation may also be ordered by a judge or support magistrate for a person who is not paying support.

Probation Officer: An officer of the county's Department of Probation. This person is responsible for investigating and preparing reports for a judge about the individuals involved in a particular case.

Pro Bono: Legal services provided for free.

Pro se: A party to a case that represents him or herself, also called self-represented or unrepresented.

Prosecute: To put someone on trial.

R

Recuse: An action taken by judge to remove him or herself from a case. This action is usually done because the judge does not think that he/she can be fair in the case. This might be because of bias, prejudice or self interest.

Referee: A person in court who is like a judge, but does not have all of the same powers as a judge. Referees can make decisions on certain cases. Those decisions can be reviewed by a judge, or if everyone agrees, those decisions can be treated like an order from a judge.

Relief: The benefit a party asks for from the opposing party in a court action.

Remand: An order by the judge that a child be kept at a detention facility while awaiting a hearing in a delinquency or PINS case. It can also refer to an order that a child be kept in

temporary foster care in a child protective proceeding.

Residential Treatment Facility: A facility authorized by the county's social services agency to care for children in foster care or who have been otherwise detained, who have special needs such as intensive mental health services.

Respondent: The person or agency against whom a petition is filed. The respondent is known as the "defendant" in other types of courts.

Restitution: Money or other compensation paid to a victim for a loss or injury.

Restrictive Placement: When a young person who is found to have committed a designated felony act is placed in a secure facility, for a specified length of time. See Designated Felony Act.

S

Seal Order: A court order mandating that a record be closed to the public.

Secure Detention Facility: A locked, guarded residential facility.

Service (of Process): The delivery of a legal notice to an individual. The notice may include a summons or warrant requiring the individual to appear in court.

Service Plan Review (SPR): A meeting held every 6 months when a child is in foster care. At the meeting, services for the child's family are discussed.

Settlement: An agreement reached by the parties about the outcome of a case.

Standby Guardian: An individual who agrees to act as a guardian for a child in cases where the parent of the child is suffering from a chronic or potentially fatal illness or is otherwise unable to care for the child.

Statute: A law enacted by a governmental body.

Stay: A court order that delays a case or an order from being put into effect.

Subject child: The child who is the focus of a court case.

Subpoena: A formal document, usually signed by a judge or lawyer, telling a witness that he or she is required to appear and give testimony before a court.

Subpoena Duces Tecum: A formal document, usually signed by a judge or lawyer, which tells a person he or she is required to produce records or other documents to the court.

Summons: Legal papers that tell a person to come to court. A summons includes the date and location of the court case.

Supervised Visitation: A visit with a child by a non-custodial parent or relative that takes place in the presence of another adult or a specific agency. See Non-Custodial Parent.

Support Collection Unit (SCU): A unit of the Department of Social Services (DSS) that collects, disburses, and enforces court-ordered support payments. See Department of Social Services.

Support Magistrate: A person in court who is like a judge, but only makes decisions in cases about paternity, child support, and spousal support.

Surrender: A voluntary agreement to terminate the parental rights of a biological parent. Surrendering has the same legal effect as a termination of parental rights and must be approved by a judge. See Termination of Parental Rights

Suspension of Judgment: When a judge temporarily delays making a decision on a case until further facts and circumstances are assessed on a later date.

Sustain: To support or maintain a court order or decision.

T

Termination of Parental Rights

(TPR): The permanent end of the legal rights of a biological parent to their child. After a TPR, the child is “freed” for adoption.

Testimony: Evidence that a witness gives under oath at trial, in an affidavit, or at a deposition.

Transcript: The official record of what was said at a court proceeding.

U

Uncontested: Unopposed. When there is no objection to the issue or fact presented.

V

Vacate: To set aside a previous case or order.

Venue: The particular county or geographical area in which a court with jurisdiction may hear a case.

Violation: The determination that someone did not follow a court order.

Voluntary Placement Agreement: A document signed by a parent or person legally responsible for a child placing the child in foster care.

W

Warrant: A court order requiring the arrest of an individual.

Witness: A person who gives testimony under oath to something they have seen, heard, or know to be true.

Without prejudice: A dismissal “without prejudice” allows a new case to be brought on the same cause of action. See Dismissal.

Writ: Order from a court requiring a certain act to be done.

