

PROBATE COURT PRACTICE GUIDE

Introduction to Probate Court

Overview

In Connecticut, Probate Courts can be utilized by relatives (and non-relatives in some cases) for matters regarding children (custody, guardianship, termination of parental rights, adoption, visitation, mental health commitment) without the involvement of the DCF, other state agencies or the Superior Courts for Juvenile or Family Matters.

The Probate Court has the ultimate decision making authority in these cases.

Several Probate Court districts have united to create Regional Children's Probate Courts. When petitions regarding children's matters are filed in these districts, the cases are referred to the Regional Children's Court for resolution. The Regional Children's Court staff hold family conferences and provide support and long-term case monitoring.

Jurisdiction/ Residency Issues

An action involving the custody, guardianship or visitation of a minor may be filed in the Probate Court district in which the minor:

- resides;
- is domiciled; or
- is located at the time of filing of the petition.

A petition to terminate parental rights may be filed in the Probate Court district in which:

- the petitioner resides;
- the child resides, is domiciled or is located at the time of the filing of the petition; or
- if the child is under the guardianship of a child caring facility or child-placing agency, the DCF Area Office handling the matter is located.

Appointment of Counsel/ Guardian *ad litem*

The Court may appoint counsel on behalf of a child. In addition to counsel for the child, the Court may appoint another person to serve as guardian *ad litem* (GAL) to speak on behalf of the best interests of the child. A GAL need not be an attorney, but should be knowledgeable about the needs and protection of children.

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**Appointment
of Counsel/
Guardian ad
litem
(continued)**

The court must appoint counsel to represent any respondent who notifies the court that he or she is unable to pay for counsel or unable to obtain counsel.

Legal references: [Conn. Gen. Stat. §45a-620](#); [Probate Court Rules of Procedure §40.2](#).

The Court shall appoint a guardian ad litem for a respondent parent who is a minor or is incompetent.

Legal reference: [Conn. Gen. Stat. §45a-621](#).

DCF Roles and Responsibilities

DCF Role

While DCF assists in Probate Court cases through the process of assessment and preparation of a thorough report, DCF does not have any formal legal standing in these cases.

DCF is often responsible for preparing reports or assessments regarding these private visitation, custody and guardianship matters, but is not involved in providing or mandating services or expectations.

DCF's involvement is typically limited to conducting a thorough assessment of the proposed guardian or custodian and submitting the report, along with recommendations regarding the proposed action, to the Probate Court. The assigned Social Worker is also responsible for attending all court hearings and meetings scheduled for the case. This includes Family Conferences held by the Probate Court. (Please see below for more information regarding Probate Court Family Conferences.)

Note: It is important that the submitted report contains appropriate recommendations based upon DCF's knowledge and experience.

The Court may request follow-up reports at any time during the course of a case and DCF is responsible for preparing all reports as requested.

The assigned Social Worker who completes the written report must attend the scheduled court hearings. This includes Investigations Social Workers when cases are assigned during the assessment process and are not referred to DCF as a Probate Court assignment. The ISW should consult with the DCF Probate Unit Supervisor to ensure that the report complies with requirements for a DCF Probate report.

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Impact of Existing Probate Court Orders Regarding Parents or Caregivers

If the Probate Court has issued prior court orders impacting a parent or guardian and his or her right of access to a child, DCF must honor those orders when making family arrangement plans regarding placement or visitation with a child.

For example, if the Probate Court has removed a child from the guardianship of a biological parent and has ordered that any visitation between the child and the parent be supervised, DCF should not support a family arrangement for the child to be placed in that biological parent’s home with the parent as the primary caregiver.

Child Protection/Safety Concerns

As noted in Policy 46-4-1, “Authority and General Procedure,” if child protection concerns are identified regarding a proposed temporary custodian or guardian, DCF shall cause a report to be made to the DCF Careline and the Probate Court assessment shall be put on hold pending the child abuse or neglect investigation.

When child protection concerns are verified as being present, a legal consult shall be held to determine whether legal sufficiency exists to file a petition in Superior Court for Juvenile Matters in order to meet the needs of the parents, proposed custodians or guardians and children.

The Probate Court does not have the ability to mandate and monitor the provision of services.

Family Arrangements

As noted above, DCF should not support family arrangements that conflict with prior orders of the Probate Court.

If, following a Considered Removal Meeting or other Child and Family Team Meeting, the family has decided to pursue action through the Probate Court, the involved DCF staff should notify the Probate Court of DCF’s involvement, including any safety plans that may be in place.

When considering whether or not a family arrangement and use of Probate Court should be pursued rather than DCF filing a petition in Superior Court for Juvenile Matters, consideration should be given to whether:

- the proposed caregiver could benefit from the support of DCF as a licensed foster parent;
 - the parent or other person removed as guardian requires services from DCF in order to achieve reunification with the child;
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Family Arrangements (continued)

- there are systemic issues of abuse or neglect that cannot be addressed through Probate Court involvement; or
- the safety and protection of the child would be better served through the involvement of SCJM.

Family members should be advised that there is a difference between temporary custody and temporary guardianship and to make their decision as to which one should be pursued according to the safety needs and best interests of the child. (See below for more information regarding temporary custody versus temporary guardianship).

Sharing of DCF Case Information

Pursuant to Conn. Gen. Stat. §17a-28(g)(16), DCF is authorized to share case information and records with the Probate Court without the consent of the person. This allows the assigned DCF staff to share information with Probate Court staff prior to the submission of DCF's report or the scheduled court hearing.

Note: DCF reports that are submitted to the Probate Court may be shared by the Court with all case participants. Many of the case participants in Probate Court hearings are pro se: they represent themselves without the assistance of an attorney. This means that these individuals will have access to all information regarding everyone listed in the DCF Report. Case participants and household members should be advised during the assessment period that the confidentiality of their information cannot be guaranteed by DCF.

Participation in Probate Court Family Conferences

Pursuant to Conn. Gen. Stat. §45a-8d, a children's matter case may be assigned to a Probate Court Family Specialist to conduct family conferences.

The purpose of a family conference is to:

- facilitate the development of a family plan for the care of the child, based on the application before the Court;
 - facilitate the development of a visitation plan;
 - collaborate with DCF;
 - assess whether a family plan is in the child's best interests;
 - assist the family in accessing services; and
 - conduct follow-up regarding orders of the Court.
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Participation in Probate Court Family Conferences (continued)

The Probate Court Family Specialist will file a report with the court that includes:

- an assessment of the child’s and family’s history;
- an assessment of the parent’s and any proposed guardian’s involvement with the child;
- information regarding the physical, social and emotional status of the interested parties;
- an assessment of the family plan for the care of the child; and
- any other information that is relevant in determining if the proposed court action is in the child’s best interests.

An integral piece of the Probate Court Family Specialist’s assessment is based on information provided by DCF and, therefore, complete information sharing and DCF’s attendance at the family conference is very important.

Typically, the initial family conference is scheduled for two weeks after the filing of the Court application(s). Ideally the assigned DCF Social Worker attends with:

- knowledge of the parties’ child protection history;
- details of such child protection history including substantiations (specify type) and unsubstantiations with details of each and the outcome;
- current or past ongoing services cases;
- compliance with services;
- outcomes of Superior Court for Juvenile Matters involvement;
- current or past safety plans; and
- information about any considered removal meetings, current or past restraining or protective orders, and criminal history of the parties.

DCF’s attendance at subsequent family conferences and collaboration with the Probate Court Family Specialist throughout the pendency of the court process is best practice and critical to the successful resolution of matters before the court.

DCF Assessment and Report

Upon request by the Probate Court, DCF shall prepare a written report (DCF-Probate-002 and DCF-Probate-003) regarding the proposed custody or guardianship action pending in the Probate Court. In preparing the report, the Social Worker shall conduct a thorough assessment of the situation and provide as much information as possible, including a recommendation based on the child’s best interest, to the Probate Court.

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**DCF
Assessment
and Report
(continued)**

The Social Worker shall:

- conduct home visits with:
 - the parents or current guardian (if available) and any members of the household;
 - the proposed guardian(s) or custodian(s) and any members of the household; and
 - the child(ren);
- interview the child(ren) alone during the assessment process, if age-and developmentally-appropriate;
- obtain releases of information; and
- conduct in-state criminal record, child protective services, sex offender, judicial, protective and restraining order registry and DMV checks on all parties including all household members, age 18 and older, involved in the case;
- gather as much social, medical, educational and employment information and documentation as possible, directly from collateral contact sources, for the report;

Note: This will include collateral checks, (e.g. of schools, doctors, therapists) for everyone residing in the homes of the parents(s) and the proposed custodian(s) or guardian(s). Information should be obtained directly from the collateral contacts, and not be based on reports from the proposed guardian (e.g., obtain records from pediatrician to ensure child is up to date medically and not rely on guardians report of medical care).

- complete the report by the day before the Probate Court hearing or other date as requested by the Court;
- provide the Probate Court with findings and recommendations, as appropriate to the petition pending, including whether:
 - there is an open DCF investigation or ongoing services case with respect to the child(ren);
 - DCF conducted a Considered Removal Meeting with the family;
 - there is a Safety or Service Agreement in effect;
 - there is any matter currently before the Superior Court for Juvenile Matters or another Probate Court concerning the child(ren);
 - the facts learned during the investigation support the allegations;
 - new allegations were uncovered;

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**DCF
Assessment
and Report
(continued)**

- the petitioner is currently able to act as an appropriate caregiver for the child(ren);
- the parents are or could be appropriate caregivers;
- the continued placement of the child with the proposed guardian(s) or custodian(s) is in the child's best interest, including the rationale for this finding;
- the current guardian is an appropriate caregiver;
- the legal guardian is in agreement with the proposed action or is contesting it;
- professionals involved with the case are in agreement with the proposed action or are contesting it;
- it is in the best interests of the child for the Court to take the proposed action; and
- recommendations for support services, visitation and expectations for all parties are appropriate.

The Social Worker shall submit the written report to the Probate Court only. The Probate Court will distribute the report to the appropriate parties.

Note: **CPS history** must be detailed in the report (this includes CMS and Central Registry placement). It is not sufficient to state "The record states there were two prior substantiations regarding physical neglect and emotional neglect." This information needs to be more detailed, e.g., "In May 2001, mother was substantiated for physical neglect for leaving her three year old alone in the home from 11:00 p.m. until 2:00 a.m. while she was out drinking at a bar. In August 2003 father was substantiated for physical neglect for physically assaulting mother while she was holding the six month old infant." Unsubstantiated investigations should be detailed in the same manner. If the case requires an immediate emergency placement, the Social Worker may conduct an NCIC criminal history check using Purpose Code X. The existence of a criminal or CPS record does not automatically preclude recommendation of a person as a proposed guardian or custodian. All recommendations must be based on the totality of the circumstances and the best interests of the child(ren).

Case Closure

The DCF case shall remain open until the final disposition of the petition in the Probate Court.

If the case gets continued indefinitely or several months into the future, DCF shall send notice, in writing, to the Probate Court judge, advising that DCF will be closing its Probate case. However, updated reports and testimony will be provided upon request of the court.

Custody and Guardianship Issues

**Difference
between
Temporary
Custody,
Temporary
Guardianship
and Removal
of Guardian**

Petitions are often filed in Probate Court when family members or other interested adults are concerned that the child's parent or current guardian is unable to provide proper care, attention or supervision for the child. In these cases, the petitioner is looking to have control of the child without fear of the parent being able to remove the child from his or her care at any time.

Temporary custody allows the petitioner to have care and control of the child pending the resolution of an underlying petition for removal of parent as guardian or termination of parental rights. Temporary custody cannot be revoked without authorization from the court.

Immediate temporary custody is a Court order granting the petition temporary custody of the child due to imminent risk and can be granted ex parte (without a hearing).

Temporary guardianship is a purely voluntary arrangement that is limited in time to one year and may be revoked by the parent or current guardian at any time.

Removal of guardian petitions are those that seek to remove a child from his or her parents or other legal guardian on a long term basis or permanently.

Petitions for temporary custody and removal of guardian are more appropriate for those cases in which there are serious safety concerns regarding the parent's or current guardian's access to or care of the child.

Petitions for temporary guardianship are more appropriate where there are no safety concerns, but the parent is unable to care for the child due to a short-term situation (illness, hospitalization, travel, etc.).

Temporary guardianship is not appropriate if DCF concludes that it would be unsafe for the child to return to parental care. A relative or other proposed custodian should not be advised to file a petition for temporary guardianship if there are grounds to file a petition for neglect or abuse.

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Special Immigrant Juvenile Status

During proceedings regarding custody and guardianship issues, the Probate Court may also be asked to make findings to be used in connection with a petition to the United States Citizenship and Immigration Services for designation of the child as having Special Immigration Juvenile Status (SIJS).

This status provides specific protections for an unaccompanied, undocumented child from another country:

- who cannot be reunified with one or both parents due to issues of abuse, neglect or abandonment; and
- for whom return to his or her home country is not in his or her best interests.

DCF is responsible for completing comprehensive reports in these cases similar to those in traditional custody and guardianship cases. It is acknowledged that the source of information for the case participants may be limited if they have resided in the United States for only a short period of time, and Social Workers are not required to search for information outside the United States in order to complete the report.

Reports should be completed with the information available to the Social Worker and must include recommendations regarding the underlying temporary custody or guardianship case.

Note: DCF does not make recommendations regarding the actual SIJS petition but provides information to assist the court in making its decision.

Psychological /Psychiatric Evaluations

In any matter before a Probate Court in which the capacity of a party to the action is at issue, the Court may order an examination of the allegedly incapable party by a physician or psychiatrist or, where appropriate, a psychologist.

Legal reference: [Conn. Gen. Stat. §45a-132a](#).

In a Removal of Guardian hearing, the Court, on its own motion, or on motion by any party, may order the child to be examined by a physician, psychiatrist or psychologist appointed by the Court. The Court may also order examination of a parent or custodian whose competency or ability to care for a child before the Court is at issue.

Legal reference: [Conn. Gen. Stat. §45a-609\(d\)](#).

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**Plenary
Guardians
and
Conservators**

When an intellectually disabled youth will be passing from DCF care upon his or her eighteenth birthday, the Department shall take appropriate steps to have a guardian or conservator appointed.

A conservator, the least restrictive means of intervention, may be appointed if a person:

- is incapable of caring for his or her self;
- cannot be cared for without a conservator.

A plenary guardian may be appointed for a person who, by reason of severe disability is:

- totally unable to meet essential requirements for physical health or safety;
- totally unable to make informed decisions regarding care.

A limited guardian may be appointed for a person who is able:

- to do some, but not all, of the tasks necessary to meet essential requirements for health and safety;
- to make some, but not all, informed decisions regarding care.

A parent or current guardian may file in probate court up to 180 days prior to the child's eighteenth birthday. DCF may assist the current guardian or parents in filing in Probate Court prior to the youth's eighteenth birthday to ensure there are no gaps in the care provided to the youth.

DCF staff shall consult with the area office legal staff for assistance with this process.

Interstate Compact on the Placement of Children (ICPC)

**Interstate
Compact on
the
Placement of
Children
(ICPC)**

Probate Court cases are not subject to the mandates of the Interstate Compact on the Placement of Children (ICPC). However, DCF's ICPC staff may serve as a resource for Courts that are asked to transfer custody or guardianship to out-of-state parties.

ICPC staff may provide referral information for private agencies when home studies are requested for out-of-state placements.
