Probate Courts Practice Guide 6-7PG

Overview

In Connecticut, Probate Courts can serve 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 Department of Children and Families (DCF), other state agencies or the Superior Courts.

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

Several Probate Court districts collaborate 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 Probate Court for resolution. The Regional Children's Probate Court staff conduct family conferences and provide support and long-term case monitoring.

Probate Court Jurisdiction

An action involving the custody, guardianship or visitation of a minor may 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, where the DCF Area Office handling the matter is located.

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Appointment of Counsel/ Guardian Ad Litem

The Probate 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.

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: C.G.S. section 45a-620; Probate Court Rules of Procedure section 40.2

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

Legal reference: C.G.S. section 45a-621

Role of DCF

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.

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Role of DCF, continued

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 intake social workers (ISW) 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.

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

If child protection concerns are identified, DCF shall make a referral to the Child Abuse and Neglect Careline for investigation of the suspected abuse. The careline social worker shall make a report to law enforcement if the report alleges sexual abuse, serious physical abuse or human trafficking 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 (SCJM) in order to meet the needs of the parents, proposed custodians or guardians and children.

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Child Protection/ Safety Concerns, continued

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

Cross reference: DCF Policy 21-14: Human Trafficking; Practice Guide 21-14PG: Human Trafficking

Alternative Care Arrange-ments

As noted above, DCF should not support alternative care 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 shall notify the Probate Court of DCF's involvement, including any safety plans that may be in place.

When considering whether or not an alternative care arrangement and use of Probate Court may be pursued rather than DCF filing a petition in SCJM, 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
- there are 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.

Note: The obligation of DCF to continue the investigation is independent of whether or not a petition is filed in Probate Court.

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Sharing of DCF Case Information

Pursuant to C.G.S. section 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 C.G.S. section 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.

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.

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Participation in Probate Court Family Conferences, continued

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 petitions(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, FAR, any non-accepted reports within the last 3 years and any other probate or voluntary service matters, with details of each and the outcome
- current or past ongoing services cases
- compliance with services
- outcomes of SCJM 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, DCF-Probate-003 or DCF-Probate-004) 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.

The social worker shall:

- conduct home visits with:
  - the parents or current guardian (if available) and any members of the household

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DCF Assessment and Report, continued

- the proposed guardian(s) or custodian(s) and any members of the household, and
- the child(ren).

- gather the demographic information necessary to conduct criminal history and CPS record background checks of the proposed guardians and household members who are 18 years of age and older, including asking for government or state issued photo identification. If the actions listed above cannot be completed during the initial visit, the social worker shall ensure they are addressed as soon as possible but before the completion of the study.
- interview the child(ren) separately and alone during the assessment process, if age-and developmentally appropriate
- obtain releases of information
- 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, 18 years of age 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

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DCF Assessment and Report, continued

- there is any matter currently before the SCJM or another Probate Court concerning the child(ren)
- the facts learned during the investigation support the allegations
- new allegations were uncovered
- 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.

Assessment shall include utilization of the ABCD paradigm when determining the proposed caregivers' commitment and stability, health, household assessments (stability, physical safety), financial stability, assessment of secondary caregivers and safety assessments. If this is a reinstatement of guardianship the assessment shall include Resolution of Removal Factors:

- Progress Documentation: Review of completed treatment programs, counseling, or parenting classes.
- Demonstrated a sustained absence of substances and/or resolution of any criminal or intimate partner violence/domestic violence issues.

All contacts including, but not limited to petitioners, proposed caregiver, child, providers and court staff, shall be documented in the CT-Kind electronic case file.

The social worker shall submit the written report to the Probate Court only. The Probate Court will distribute the report to the appropriate parties.

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DCF Assessment and Report, continued

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

DCF, at its discretion, may close its case after the final dispositional hearing regarding the application or petition pending before the Probate Court.

If the final disposition of a case is delayed beyond the original anticipated final hearing date, DCF shall notify the court that the DCF case will be closed. However, an updated status report will be completed at the request of the court.

DCF shall not keep the case open through the probate unit to monitor the case. If it is believed that DCF monitoring or additional services are required to ensure the well-being of the child, a CPS referral shall be made.

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Difference between Temporary Custody, Temporary Guardian-ship 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 petitioner 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. Temporary guardianship is not appropriate if DCF concludes that it would be unsafe for the child to return to parental care.

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.).

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.

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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. However, reasonable efforts shall be made to contact the non-custodial parent.

Reports should be completed using the DCF/Probate 004 (Probate Court Study for Special Immigrant Juvenile Status) 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.

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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: C.G.S. section 45a-132

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.

Legal reference: C.G.S. section 45a-609(d)

Plenary Guardians and Conservators

When an intellectually disabled youth will be passing from DCF care upon his or her eighteenth birthday, DCF 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, and
- 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, and
- 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, and
- to make some, but not all, informed decisions regarding care.

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Plenary Guardians and Conserva-tors, continued	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)	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.