

Beware Of The DYFS Case

February 10, 2014 | by Einhorn Barbarito

Most American parents believe that they are the ultimate decision-makers of all issues concerning their children. Unfortunately, that is not true, especially when the New Jersey Division of Youth and Family Services becomes involved with your family. Under our Title 9 statute, the state is really the ultimate parent. The following is an explanation of what may happen if DYFS becomes involved with you and your children.

Children are protected by the Title 9 Abuse and Neglect law, which provides that DYFS must investigate all claims of abuse and neglect, even if they are made anonymously and without corroboration. The complaints are investigated on an emergency basis, with a follow up investigation conducted. Investigations will lead to a finding of substantiated child abuse and neglect of an “unfounded filing.”

If an investigation results as “unfounded,” your name is not placed in the central registry for child abuse and neglect. However, the fact of investigation continues to exist. If the agency substantiates the allegations of abuse and neglect, your name will forever be placed in a central registry. That placement will result in your inability to adopt, become a foster parent, or seek employment in daycare or educational facilities. You have a right to appeal such substantiation, which must be filed within 20 days of your receipt of a substantiation letter.

In addition, substantiation will result in DYFS taking action by either compelling you to enter into a case plan they develop by taking you to court. Under either situation, DYFS will become the ultimate parent and will continue to be involved with your family making you subject to random visits and other procedures, including counseling, therapy and other forms of treatment.

DO YOU HAVE RIGHTS?

Absolutely. DYFS is not all-powerful. It is a large bureaucracy that works by policy and protocols. It does not treat each family individually based upon the family's unique character. Although DYFS is required to preserve the family unit, it often times breaks families apart, removing children or ordering one parent to leave the household. The Division can actually remove a child without court order, if it believes that a child or children's life is subject to imminent risk. It can accomplish this based upon anonymous information, interviews with your children, even without your permission or knowledge. Ultimately, any DYFS case involving removal of the children must be brought before a court. If there is an emergency removal, DYFS must bring the matter before a judge within two business days of that emergency removal.

In other circumstances, the Division may file an emergency application (Order to Show Cause) seeking the removal of your children or otherwise seeking to gain legal custody of them. Even though DYFS has an incredible amount of power, you as parent still have significant rights. Parents are protected by both a Federal and State Constitution. Parents are entitled to due process. This means that you may hire a competent attorney who appears regularly in DYFS matters and who is familiar with DYFS law and procedures.

It is important to hire an attorney who has DYFS experience. The laws involving child abuse, neglect and parental termination are far different from any other statutes and laws. Additionally, by statute, DYFS is required to report substantiated abuse cases to the respective county prosecutor for review to determine if criminal charges will be filed if the allegations include excessive corporal punishment, sexual abuse or lack of proper medical care or lack of supervision.

If you are being investigated by DYFS, contact an attorney immediately to obtain advice. Do not provide statements to DYFS workers, unless you have contacted an attorney and received legal advice.

Statements given to DYFS workers or therapists brought in by DYFS can be used as evidence against you in both the DYFS proceeding or a subsequent criminal prosecution. Your DYFS lawyer will advise

you how to avoid giving evidence against yourself. There are ways to protect yourself and your children from unfair and undue interference by DYFS. It is important that you realize that in a DYFS case, the agency will be represented by a Deputy Attorney General, and a law guardian will be appointed to represent your children. Oftentimes the law guardian will simply adopt the DYFS position. Therefore, it is important that you have counsel to protect your rights to serve as an advocate in your behalf. Under some circumstances, both you and your spouse or other parent will need separate attorneys—for example, when a conflict of interest situation arises based upon the facts.

Michael R. Ascher, a partner in the law firm of Einhorn, Barbarito, Frost & Botwinick, PC, has been practicing in DYFS courts for over 25 years. He has been involved in major DYFS cases involving allegations of physical and sexual abuse and lack of proper medical care and supervision. He has also been involved in DYFS cases, which were ultimately referred for prosecution in criminal courts.